

TRIAL

—OF—

CAPT. WILLIAM H. TOWER,

Charged with feloniously Scuttling the

BARQUE BROTHERS' PRIDE,

OF SAINT JOHN, N. B.,

ON THE

7th DAY OF MAY, 1879,

In the Gulf Stream off the Coast of Florida.



SAINT JOHN, N. B.:  
TELEGRAPH STEAM JOB PRINT, CANTERBURY STREET.

1880.

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HON. JOHN C. ALLEN, Chief Justice.



A FULL REPORT  
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## P R E F A C E .

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THE QUEEN *vs.* WILLIAM H. TOWER, charged with scuttling the British Barque Brothers' Pride is destined in the criminal annals of New Brunswick to become a *cause celebre*. In fact, it may be said, from the deep interest it has excited in the Dominion as well as in the United States, it will assume National importance. This is the first case of the kind tried in New Brunswick, and we believe in the Dominion.

It occupied nearly two months in its trial, and the interest taken in it by the public instead of flagging rather increased until its close.

Twenty-four witnesses were examined on the part of the Crown and thirty-one for the defence. And in addition seven were called by the prosecution in rebuttal. In all over sixty witnesses.

The presiding Judge, Chief Justice Allen, is distinguished not less for his eminent legal attainments than for his great patience and unwearied assiduity. During the trial his patience was taxed to its utmost capacity on more than one occasion. His uprightness and great integrity secure for him general respect.

The council on the part of the Crown were S. R. Thomson, Esq., Q. C., Wm. Pugsley, Esq., A. B., who appeared on behalf of the Solicitor General of the Province, and Silas Alward, Esq., A. M., who represented the Great Western and United States Lloyds Insurance Companies.

Of Mr. Thomson, the leader of the Bar of New Brunswick, whose reputation as an eloquent and distinguished advocate has long been established, comment is unnecessary.

Mr. Pugsley, a rising young Barrister, is well known as a careful methodical practitioner, whose courtesy and legal acumen have won for him respect.

Mr. Alward, who rendered material assistance to the Crown during the trial of the cause, has already signalized himself in the profession as a sound lawyer and able *nisi prius* advocate.

The prisoner was ably defended by D. S. Kerr, Esq., Q. C., senior counsel, and John Kerr, Esq. Mr. D. S. Kerr is generally known as one of the deepest read and ablest lawyers at the New Brunswick Bar. His devotion to the interests of his clients and his unwearied industry are among his striking characteristics.

Mr. Kerr, Sr. was ably assisted by John Kerr, Esq., who is a young gentleman rapidly rising in his profession, in which he promises to take a leading position at no distant day. He is painstaking and nothing escapes him in the interest of his client.

This account of the proceedings was arranged by the subscriber who reported the case from its commencement for the St. John DAILY TELEGRAPH, and though the reports printed in that journal from day to day, inclose the greater portion of this pamphlet, the publisher, from additional notes carefully taken, during the progress of the trial, has been enabled to somewhat extend these reports, consequently placing him in a position to render to the public a more minute history of the case.

J. F. HENNIGAR.

St. John, N. B., May, 1880.



# THE BROTHERS' PRIDE

## SHIP SCUTTLING TRIAL.

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The barque "Brothers' Pride" was built in McDonald's Shipyard, Courtney Bay, St. John, N. B., and launched the 30th July, 1866. She had one and a half poop decks, three masts, and a round stern,—was Carvel build, with a woman figure-head, and framework of spruce wood. Her dimensions were, length 134 feet 6 tenths, breadth 30 feet, and depth 12 feet 9 tenths. Her tonnage, under tonnage deck, was  $323\frac{38}{100}$  tons, half poop  $65\frac{76}{100}$  tons, and trunk on half poop  $8\frac{49}{100}$  tons, making her regular tonnage  $379\frac{63}{100}$  tons. She classed A 1 5 years in English Lloyds. Her owners at the time were George Heber Oulton and Charles Harvey Oulton, both of St. John, N. B., merchants, joint owners of forty shares, Daniel Wetmore Clark, of St. John, N. B., millwright, sixteen shares, and George Hutchinson, of St. John, N. B., jeweller, eight shares. On the 19th June, 1867, the half poop was lengthened at Greenock, and her amended tonnage is as follows: tonnage, under tonnage deck,  $323\frac{38}{100}$  tons, half poop  $110\frac{78}{100}$  tons, trunk on half poop  $8\frac{49}{100}$  tons, and regular tonnage  $442\frac{65}{100}$  tons, being an addition of  $45\frac{02}{100}$  tons. She was then re-classed A 1 4 years in American Lloyds. On the 3rd October, 1872, George H. Oulton and Charles H. Oulton sold their forty shares to Jeremiah Smith Boies DeVeber, of St. John, N. B., merchant, which was registered on the 7th October, 1872, when the ownership was as follows:—J. S. B. DeVeber 40 shares, Daniel W. Clark 16 shares, George Hutchinson 8 shares. J. S. B. DeVeber by bill of sale dated 4th December, 1872, and registered 3rd February, 1873, sold to Acalus Lockwood Palmer, Barrister, 27 shares and Daniel John McLaughlin, Junr., merchant, 13 shares, both of St. John, N. B., leaving the ownership as follows:—A. L. Palmer 27 shares, D. J. McLaughlin, Jr., 13 shares, D. W. Clark 16 shares, and George Hutchinson 8 shares. Daniel W. Clark by bill of sale dated 2nd March, 1874, and registered 7th March, 1874, sold 16 shares to Acalus Lockwood Palmer, leaving the ownership as follows:—A. L. Palmer 43 shares, D. J. McLaughlin, Jr., 13 shares, George Hutchinson 8 shares. George Hutchinson by bill of sale under mortgage dated 24th June, 1878, and registered 25th June, 1878, sold 8 shares to Charles Arthur Palmer of St. John, N. B., Barrister, leaving ownership as follows:—A. L. Palmer 43 shares, D. J. McLaughlin, Jr., 13 shares, Charles A. Palmer 8 shares, and these continued to the time of her loss. The vessel cost \$26,000 and was built for the Messrs. Oulton Bros., by Frederick J. Doherty.

### THE PROTEST OF THE BROTHERS' PRIDE'S LOSS.

The following is a copy of the protest submitted in evidence by the defence. The protest was made before Joseph C. Hughes, Notary Public, 65 Wall Street, New York, by Capt. Tower, who, with Tracey C. Roberts 1st mate, Howard C.

Thomas 2nd mate, Geo. H. Hall steward, Joseph Anderson, Chas. Lutze, Jerry Spline, C. Wilhelm Hahan and John Trisinski seamen, appeared and being duly sworn on the Holy Evangelists of Almighty God freely and solemnly declared and deposed as follows:—that on the 5th day of May, 1879, set sail and departed in the “Brothers’ Pride” from Cardenas with a cargo of Melado for the port of New York, the said vessel being staunch and strong, cargo well stowed and secured and in every respect fit for sea and the voyage she was about to undertake.

That on said 5th day of May, at 6 a. m., got underway, made sail and proceeded on the voyage with fresh S. E. winds and fine weather.

*May 6th*: Towards daylight wind increasing from N. E. and a heavy sea getting up causing the vessel to labor heavily; wind continued to increase until noon when it was blowing a heavy northerly gale with a very heavy cross sea in which the vessel labored and strained heavily. This heavy weather continued until about 8 p. m., the vessel continually laboring and straining severely. After that time the gale began to abate and the sea became more moderate. The pumps were regularly attended to and the vessel was found to be making a considerable quantity of water. During the night, the wind blowing fresh from N. E. to E. N. E., and the ship laboring and straining heavily and leak increasing rapidly. Crew constantly at the pumps.

*May 7th*, comes in blowing fresh with heavy sea and ship laboring heavily. Leak rapidly gaining on the pumps. Shortly after midnight sounded pumps and found  $5\frac{1}{2}$  feet of water in the hold, and in about an hour afterwards sounded  $6\frac{1}{2}$  feet. Notwithstanding all efforts made by the crew the leak rapidly increased at the rate of about one foot per hour, and until about 5 a. m., when the ship had about 12 feet of water in the hold. During the night the crank of the port pump was broken, and from that time until morning the starboard pump was continually worked but without succeeding in reducing the water in the ship. Considering that there was no more hope left of saving the vessel it was determined to abandon her, and accordingly all hands took both boats and made for the coast of Florida, then about 50 miles distant. After we had got about 2 miles off from the ship we saw her settle down on her side and then go down head-first and disappear. On the following day, at about 3 p. m., the crew landed on beach about 35 miles from Cape Canaveral, from whence they proceeded to Titusville and Jacksonville, and thence by steamer to New York where they arrived on the afternoon of the 20th inst. This protest is extended from memory, the ship’s log book having been lost by the capsizing of the mate’s boat in the breakers on the beach.

The protest was signed in the usual manner by the Captain, Officers and Crew.

#### THE NAVAL COURT PROCEEDINGS.

The following is the the Naval Court inquiry concerning the loss of the “Brothers’ Pride,” the proceedings having been submitted in evidence by the defence during the testimony of Mr Joseph Hughes:—

REPORT OF THE PROCEEDINGS OF A NAVAL COURT HELD AT HER BRITANNIC MAJESTY’S CONSULATE GENERAL, NEW YORK, ON FRIDAY, THE 23RD DAY OF MAY, 1879.

#### *Present:*

E. M. Archibald, Esq., C. B., Her Britannic Majesty’s Consul General, New York, President.

John Hadderwick, Master of S. S. Anchoria, of Glasgow, O. N., 70476. C. C. 14833.

Archibald Young, Master of the ship Simla, of Liverpool, O. N., 70878. C. C. 3497.

The Court was held for the purpose of investigating the circumstances connected with the abandonment at sea, on the 7th May, 1879, of the barque Brothers’ Pride, while on a voyage from Cardenas, Cuba, to New York, with a cargo of Melado.



*In the matter of the investigation into the facts concerning the loss of the barque Brothers' Pride.*

MAY 23, 1879.

WILLIAM H. TOWER having been first duly sworn, testified as follows : I am the master of the British barque Brothers' Pride. I became master of her in November, 1877, at Shediac, New Brunswick. I hold an English certificate of competency as Master No. 94897. I have not my certificate here. I continued master of that vessel from that time up to the time she was lost. The Brothers' Pride was a wooden bark of 442 and some hundredths tons. She was built in 1866. (Witness produced register of bark Brother's Pride.) She sailed on the voyage before the last one from Cardiff to Cienfuegos, Cuba, with a cargo of coal. After she discharged her cargo she came round to Cardenas in ballast, and there loaded with melado. I have nothing with me shewing amount or weight of the cargo. I had nothing but the Charter Party and the bills of lading to shew that, and I suppose they are down at the agent's. As near as I can recollect, we had 863 hogsheads of melado. I do not recollect the weight of the cargo. The draft of the vessel when loaded was about 14 feet. That was entered on the log book. We had a Plimsoll mark on the vessel. When she was loaded she was not down to her Plimsoll mark by 6 inches, I should think. I should think her Plimsoll mark was fully 6 inches clear of the water when she was loaded and ready to sail. We were about three weeks loading at Cardenas. We shipped our crew at Cardiff. We had ten hands, all told, myself included. On the voyage from Cardiff to Cienfuegos we had a cargo of 517 tons of coal, I think. We discharged that at Cienfuegos. Before proceeding to Cardenas we took in a small quantity of ballast to trim her. At Cardenas we took out some of the ballast as we had cargo enough to trim her. She could carry 500 tons of cargo conveniently. We sailed from Cardenas on the morning of the 5th of May, bound for New York. At the time we sailed the vessel was in good condition as far as I knew; she was tight; we made no water of any consequence while in port. I don't think she was pumped more than once or twice while we were in port, and then there was no water in her. We had two iron pumps. They were worked with a crank and fly wheel; there were two wheels. She was well found and in good condition as regards her rigging, spars, &c. When we sailed the weather was fine, at least, it was moderate—the same weather that we usually have there right along. I have not the log book with me; it is lost. The mate had the log book in his boat, and when we were landing, his boat was capsized, and the log book was lost. At the time we landed the mate was in one boat and I was in the other. We had no official log book. I had the register and the articles in my pocket. We sailed on the morning of the 5th at about 5 or 6 o'clock. The wind at that time was about south-east, as near as I can tell. On the 6th we had strong winds—a gale of wind, from I should think about east north-east, or north-east. The sea was heavy—a nasty cross, sharp sea; it blew hard all the day from the north-east. The vessel commenced making water that day—on the 6th; that was the second day out. In that breeze of wind she commenced to leak pretty badly; that was the time she sprung a leak. Towards night the weather moderated a little. On the

6th the pumps were going all day ; all hands were at the pumps during the whole day, but the leak increased on us. We kept the men at the pumps all day until the port pump gave out ; the crank gave way—broke short off. On the morning of the 7th we left the vessel. On the 6th we were sounding the pumps all along, but I could not give the depth of water every time we sounded. On the night of the 6th I know we sounded the pumps and found 5 feet and a half of water in her. This was at about midnight. I was not present every time when the pumps were sounded, but they gave me the report. All hands were at the pumps all night of the 6th. They pumped until they could not pump any longer, or until they did not want to stay at the pumps any longer. On the morning of the 7th there was not so much wind or sea. The sea was not breaking, or combing, or anything of that kind. We left the vessel on the morning of the 7th about 5 or 6 o'clock. At that time there was about 12 feet of water, or over, in her. That was the last sounding that we got. All hands had been pumping all night, but we only had the one pump, as one had given out—the port pump. The crank that works the pump that the fly weels are on, broke square off as short as a pipe stem, right in the place where the pumps work. We could not rig up anything to mend it as we had nothing to rig it with in the ship in the way of iron. I tried to fix it up but I could not. When we abandoned the vessel we were about 50 miles off Cape Canaveral. After leaving Cardenas we steered different courses. If I had a chart I could show you exactly. I steered the usual courses coming up there. I think the first course from Cardenas up by the Salt Cay Bank is about north-east by north—something like that. Cardenas is east from Havana about 70 or 75 miles.

Q. At the time you discovered this leak on the day after you left, with the wind blowing from the east, could you have put back to Cardenas?

A. I suppose we could, but it is awkward getting back against the stream.

Q. If you hadn't made Cardenas couldn't you have made Havana?

A. I suppose I might.

Q. What other port is between Cardenas and Havana?

A. Matanzas. That is about 40 miles or a little more to the eastward of Havana.

Q. Taking into consideration the state of wind and weather at the time when you found that leak on the 6th, couldn't you have gone back to Matanzas or Cardenas?

A. I suppose I could, but I thought of getting along on the shore further. At Matanzas there is nothing there if I had put back,—no docks or anything of that kind,—nothing more than an open roadstead. We left the vessel in our own boats, the long boat and the jolly boat or yawl boat. I went in one boat and the mate went in the other. Five hands went in each boat, and no land was in sight at the time. We judged ourselves to be about 50 miles off cape Canaveral. I had a small compass with me in the boat. There was a good breeze blowing and considerable of a sea. The mate was to follow me. We kept company all the way ashore. We had a little provisions with us,—some hard bread and water, that is about all. I had a chronometer with me. The mate took the log book in his boat. The names of the men in our boat



were Howard Thomas, the boatswain, George Hall, the steward, Jerry Spline and Carl Lutz. These hands went with me and the rest went with the mate in his boat. We did nothing toward saving any of the spars or rigging of the vessel. When we left the vessel the lower top-sails and the jib and spanker were set; I think that was the sail on her. We last sounded just before we left her. At that time there was 12 feet of water in her as near as I can tell.

Q. To what do you attribute this leak in apparently moderate weather, and no strong breeze, so soon after leaving port?

A. We had a strong breeze, and the vessel was laboring considerably. We lost no spars or sails. I do not know what to attribute the leak to. She sprang a leak somewhere under water. We couldn't get down below to find the leak as she was full of cargo. This leak, whatever it was, by which the water got into the ship, must have been under her water line; it did not come into her top sides.

Q. On your voyage out from Cardenas to Cienfuegos, did the ship leak?

A. Not a very great deal; some.

Q. Is not a coal cargo rather a straining cargo in heavy sea way?

A. No sir; I do not think it is a very heavy cargo. I do not think it is much heavier than melado.

Q. She did not leak more than an ordinary ship would leak on the way out?

A. No sir; we pumped her each watch as usual. On the voyage out we left Cardenas on the 5th day of January last, and we were sixty days on the voyage. We had some rough weather after leaving Cardiff; the latter part of the passage was fine. The vessel was caulked in Cardiff. I did not find anything that wanted to be done to the vessel at Cuba. After we abandoned the vessel we landed on the Florida beach about 30 miles to the north of cape Canaveral. We landed on the day after we left the vessel at about 3 o'clock in the afternoon. The next place we got to was Titusville. That is to the westward of where we landed.

Q. [Showing witness paper.] This purports to be a copy of the protest made by you?

A. Yes sir; I noted my protest first in Titusville, before Mr. Titus, a Notary Public, and I extended it here in New York. This protest was prepared from memory and not from the log book. From Titusville we went to Jacksonville, and from Jacksonville we came here in the steamer City of Dallas. All hands came. We arrived here about 4 o'clock on Tuesday. I reported at this office on Thursday morning.

Q. Why didn't you report here on Wednesday?

A. I was going about getting the protest and fixing things up.

Q. Didn't you know it was your duty to come with your register to this office first and report here?

A. Yes sir.

Q. Where were the hands all that while?

A. At the Sailor's home—I don't know which Home. I extended my protest on Wednesday, and the hands and officers who signed it, signed it on Wednesday. A. L. Palmer is the owner of the Brothers' Pride, now, though he is not the register. He resides in St. John, New Brunswick. I am not interested in the vessel in any way. I was merely on

wages as master. I have no interest in cargo or freight. I saw by the *Maritime Register* that the vessel and cargo were insured. I do not know myself, of my own knowledge, that they were insured. I can tell nothing about the insurance or where she was insured. I do not know who furnished the information that is in the *Maritime Register*. I have seen no reporter upon the subject. I telegraphed the owner of the loss from Pulaski, Florida.

Q. Considering the weather that you have described as having on the 6th, could you not with the exercise of a little more exertion and skill have gotten that vessel into port?

A. There was no port that we could get to.

Q. There was a port on your lee—Matanzas.

A. It was a good way off; it was, I should think as far from us at that time as Havana would be, or any of these ports. We were coming up the Gulf Stream.

Q. Did you see any of the Bahama Islands as you passed along?

A. I saw the light on the Salt Cay Bank. That was on the starboard side. I was to the leeward of the light. On leaving Cardenas we dragged on the mud a little, as vessels always do on leaving that port, but it did us no damage. She leaked very little on the 5th. I did not hear anything about any leak the first day. When we had the strong breeze we had our light sails in. I believe the top-gallant sails were furled. We were close by the wind then. During that gale the ship rolled and plunged some.

Q. Do you not think that by keeping the vessel off before the wind she might have been easier and not have made so much water?

A. We could not keep her on the wind long because we would have got ashore.

Q. Since you have arrived here in port have you paid off the crew?

A. No sir; they are not paid off.

Q. Have you given them money?

A. Yes sir; they had to have something to live on.

Q. They are on the subsistence list of the Consulate; they are provided for by the Consulate?

A. Yes sir.

Q. What did you give them money for?

A. They wanted some money. I did not give the crew much. I gave the officers some.

Q. You were told by the Vice Consul to give them no money until the investigation was over?

A. I don't remember of his telling me not to give them any money. They have not been paid off as yet with the exception of one who was paid here yesterday, who was going away. The mate, boatswain and steward have slept at the Eastern Hotel some of the time, and some of the time aboard of a vessel with some people they are acquainted with. They told this gentleman here yesterday that they would not go to the Home. I thought it was just as easy to get up the shore, up to Brunswick or some of those places, or easier than it was to go back against the strong current. I do not know how far I was from Brunswick at the time we abandoned her.



Q. Wasn't the starboard pump sufficient to keep the vessel free of water, so as to bring her up to Fernandina or Brunswick?

A. No; the starboard pump would not keep her free or else we would not have left her. It took us perhaps fifteen or twenty minutes to fix this pump. Of course the water was gaining on us pretty rapidly then; we rigged it just as quick as we could. The men were frightened a little; they wanted to leave the vessel long before I did; they came to me and told me so; they came after they had been pumping awhile. I don't know what time in the night it was. They said they had pumped until they could not pump any longer, and they did not know how soon the vessel was going down. I have been in this vessel about eighteen months; I have made two or three voyages in her. Mr. Palmer put me in this vessel himself. After the port pump was broken we sounded her that night and she gained nearly a foot an hour. I suppose the leak must have been a butt or something like that. She didn't touch the ground to do her any hurt coming out of Cardenas. When we came out of Cardenas there was just a moderate breeze. The vessel was coppered up to light water. I did not take particular notice whether it was a new or old break in the pump crank; I don't know what caused it.

Q. Could you have got to port if you had had both pumps working?

A. I don't know; I suppose we would have got further along if we had had two pumps. I joined the ship at Shediak, from thence I went across to Bolon Dock up in the Clyde, from there I went to Cardenas, from there to Philadelphia, from Philadelphia to Valencia, from Valencia to Bathurst, from Bathurst to Bristol, and from Bristol to Cienfuegos, and then started for New York.

Q. You say there was some place where you caulked her. Did you do that by order, or from your own judgment?

A. I had no order. I didn't take the copper off to caulk her. Her top had been leaking a little, but the bottom was all right. I examined all the butts that I could see, but I didn't take off any of the copper to examine underneath. There were no signs of starting or breaking of butts at that time. I don't know what time in the night we put the boats over the side; it was late in the night. It was when they came and said they could not possibly keep the vessel free, and the crew were in and out of the boats, back and forth during the night. After they had got the boats out we did some pumping. I saw the vessel go down. I suppose we were two or three miles away from her then. I can say positively that I saw the vessel sink. I am certain of that. I think that pump was broken along in the dog watch about six o'clock on Tuesday evening.

TRACY C. ROBERTS having been first duly sworn, testified as follows: I am the mate of the Brothers' Pride; I shipped on her in Cardiff; I have a certificate of competency as master. I went out on this ship with a cargo of coal; her draft at that time I don't exactly remember. We left Cardiff in January I think; we had pretty fine weather out; the ship was staunch and tight. We discharged her cargo at Cienfuegos, and then went to Cardenas to load, and took on board a cargo of melado. I kept account of the cargo when we loaded; we had somewhere about eight hundred casks, I can't say exact. When the ship was loaded and ready



for sea her draft was somewhere about 3 ft. 10 in. She was not very deeply laden. I think she was loaded up to the Plimsoll mark, though I am not certain. The log book was lost in coming ashore on the beach. I had it in the small boat with me and my boat was upset and everything was washed away. The log book was in my trunk and my trunk was lost. We sailed from Cardenas on the 5th of May at about six o'clock in the morning; the ship at that time was in good condition and well found. After we left we had a moderate breeze the first day, and Tuesday morning it commenced to breeze up from the northeast. On Tuesday morning we first noticed that she commenced to leak more; there was considerable of a sea, and the wind was freshening, and we took in the top-gallant and light sails. We kept all hands at the pumps all that day. That night the crank of one of the pumps broke—the port pump—then we had only one. We had no means of mending it. On Tuesday night the leak gained on us, and she kept gaining on us all the time. We kept sounding all along. At first she commenced gaining two inches an hour, and then increasing along. All hands were kept at the pumps all night. I think the pump broke Tuesday morning. There were Wilson's iron pumps. On Wednesday morning we sounded, and there was about ten feet of water in her, that was at about two o'clock; when we sounded at six o'clock, just before we left her, she had about twelve feet of water in her. I could hear the water in the hold pretty well up. We first resolved to leave the ship after we found there was that much water in her. I think the second mate did the sounding. At the time we left the vessel no land was in sight. The master took charge of one of the boats, in which we left the vessel, and I took charge of the other. It took us half an hour or so to get the boats out. Half of the crew went in each boat. I followed after the master's boat; he had a small sail, but we had none; sometimes we pulled and sometimes we were towed by the Captain's boat. My boat was not connected with the other by a tow rope, all the while. The weather was not very fine; that night it came on pretty rough—the weather looked very threatening—and we shipped several seas. We landed the next day at about four o'clock in the afternoon on the beach. There was a heavy gale that night. I took a small trunk with me when I left the vessel. I don't think the Captain had a trunk. He had a chronometer with him. The vessel was under small sail when we left her.

Q. Could you not, by working at the pumps vigorously, have kept her afloat until you could have got to Brunswick, or Savannah or Jacksonville?

A. I don't think we could.

Q. Why not?

A. I don't think she would have held up with that much water in her. At the time we abandoned her, Jacksonville would be about one hundred and sixty miles off, Brunswick about one hundred and eighty miles, and Savannah about two hundred miles. I did not take the latitude or longitude before we left her; I think it was in about  $28\frac{1}{2}$ . The wind at that time was north-east. We left the vessel at about six o'clock on the 7th and we landed on the beach about three o'clock the next afternoon.

Q. With the ship as she was, in the place where you abandoned her, could you not have got to Jacksonville in the same time?

A. No sir ; I don't think we could ; not in the condition she was in ; we were one hundred and sixty miles from there, and with that water in her, the ship might become unmanageable. That is my opinion of it. I have no idea what caused the ship to make so much water. She did not strike on the ground anywhere. We were not carrying on hard. I did not feel her touch anything—any log or anything of that kind. On the 6th we furled the top-gallant sails, and light sails. On the 6th we were not afraid of the leak at first. It is a usual thing for vessels to make water when they first come out of port in hot climates, but we thought, of course, we could keep it under. The vessel had low timber ports—only between decks ones. The men lived in the deck house. The cargo was stowed right forward pretty well to the bow ports. The cargo was stowed right up to the stem, in the between-decks. The port lashings were all good and secure ; the port was lashed in and hadn't been started for a long while. I think our average speed from the time we left Cardenas until we abandoned the ship was somewhere about six or seven knots.

Q. At even a smaller speed than that and with the wind as it was, what time would it take for your vessel to have reached Jacksonville or Brunswick—about four and twenty hours' run ?

A. That quantity of water would have made a great difference in her ; she would not be liable to work as well, or go as fast.

Q. Was there anything to prevent your carrying more sail on her ?

A. No, sir ; we didn't carry much sail so as to ease the leak.

Q. You are a navigator and understood where you were ?

A. Yes, sir.

Q. Seeing there was a possibility of getting into port within the twenty-four hours' sail, or even more, under all the circumstances, don't you think you could have gotten the ship into port ?

A. Under the circumstances, in my opinion, we could not. I was down below hunting for the leak but I could hear nothing ; I wasn't down in the lazaretto.

Q. Do you suppose, if you had had both pumps working, you could have got to Jacksonville, or Brunswick, or Savannah ?

A. I don't think we could, for the men were getting worn out. We got here in New York on Tuesday night, I think. I joined in making the protest on Wednesday. I came here to the Consul's office on Thursday. After we left the vessel we kept her in sight until we were between two and three miles from her ; we then lost sight of her. I suppose she careened over and went down. She vanished from sight. She was well down when we left her. My impression is that she went down ; she went down and we couldn't see anything of her.

HOWARD C. THOMAS being first duly sworn, testified as follows : I joined the Brothers' Pride in Cardiff. I was second mate and boatswain. The ship sailed from Cardenas on the 5th of May ; she was loaded about fourteen feet aft, and thirteen feet nine or ten forward ; she was not loaded up to the Plimsoll mark—within about six inches of the Plimsoll mark. She was in good condition—tight and staunch. On the 5th we had middling weather ; the breeze got up that night quite fresh, and on Tuesday morning it blowed quite heavy from the north-east. We were



on the starboard tack. We made, with the aid of the stream, about six knots. On Tuesday we took the top-gallant sails off her; all the other sails were set before that, but the light stay-sail. I first noticed the ship beginning to make more water than usual on Tuesday—I don't recollect what time exactly. She didn't make any water on Monday to speak of. Monday night she began to make more water. On Tuesday about noon we sounded the pumps; we kept her pretty free right along until then, although there was a heavy sea running. She then, after that, began to make more water. On Tuesday night she was making about three inches on us. The men got tired pumping and went aft and told the Captain they wanted to get the boat out—that was somewhere about twelve o'clock at night; there was about six feet of water in her then. We left the vessel at about five or six o'clock on Wednesday morning; I left her in the Captain's boat. I didn't take anything with me except the clothes I had on and my best clothes, which I have on now. The Captain did not take his trunk with him; he took a chronometer and a compass, and his overcoat. The rest of the crew didn't take anything but what they wore. After we left the vessel we rowed and sailed and rowed and sailed. Only the big boat had a sail. That night it blew very fresh and thundered and lightened; I thought it was all up with us. We landed at about three or four o'clock in the afternoon, and then we went to Titusville. I had never been in that part of the world before. We steered west in going for the land; I judge we had to go about forty or fifty miles. We went very slowly and we were pretty well tired out. I couldn't tell what was the cause of the ship leaking; we had a heavy sea and quite a gale of wind on Tuesday. The only sails we furled were the top-gallant sails and the light sails. At the time we abandoned her we were going about six knots. At the time we left there were about twelve feet of water in her,—I am certain of that. She made a great deal of water during the night, and we broke one of the pumps along dog watch. We pumped steadily. The mate, Captain and I sounded the pumps. We had no carpenter in the ship. I saw the Captain sound her, and I saw the first mate sound her. I was pumping myself most of the time. We had a sounding pipe, and after we broke the pump we drewed the box to make sure there was that much water in her. We had no reef in the sails from the time we left port until we left the ship; we could carry whole top-sails all the time; the weather wasn't very fine though.

Q. Was there any talk on board about making for the nearest port, or doing anything of that kind?

A. No, sir.

Q. Just to keep her afloat that was all you were trying to do?

A. Yes, sir, and we were trying to get her up to the northward. At about twelve o'clock that night we found there wasn't much use of trying to put her into any port. It was clear after we left her until about ten o'clock and then it came on foggy. We were about three miles off when we lost sight of her. It was then clear. She went down before we were out of sight of her; we saw her sink. I saw her sink. She chucked herself. I suppose she sank.

Q. Do you mean to say that you actually saw her go over, as if she was sinking.



A. Yes, sir, I saw her go out of sight. We had been away from her then about an hour and a half, or somewhere along there. The vessel was pretty near full of water. There was a little hatch forward where you could see down through the barrels and you could hear the water rolling into her. I went and sounded her and there were eleven and a half feet of water in her. When we got into the boat the deck was nearly on a level with the water. We got into the boat about amidships, and the deck was about a foot and a half or two feet above the water. I cannot say that she went down but I saw her go out of sight; I saw her keel over.

GEORGE HALL having been first duly sworn, testified as follows: I was cook and steward on the Brothers' Pride. I joined her at Cardiff. I remember the time we sailed from Cardenas and the abandonment of the ship. On Monday the weather was pretty bad—blowing pretty hard. On Tuesday blowing pretty hard. I had nothing to do with the navigation of the ship. I took my turn with the men at the pumps after they got kind of played out, until I got tired out myself, and then I went to the galley and made some coffee for them. I came away in the Captain's boat. I brought nothing but a spare suit wrapped up in a handkerchief; that is the only thing I saved. Since I got to New York the Captain gave me five dollars to buy a hat and some clothes and shirt. I knew nothing about the depth of water in the vessel. After we got away half a mile the ship went right down. I am certain of that. We had been away from her about fifteen minutes. She had her sails all set and she went right down. I kept my coal and wood in the top-gallant forecastle; there was no place below that that I know of. I think she had an after peak or lazarette, under the cabin; I never was down there. I never saw the Captain or Mate down there. It was rough weather all the time from the time we left port. I heard no talk as to what was the cause of the leak. The men talked about leaving the ship; they said they were played out and they couldn't gain on the water. The vessel carried no passengers.

JERRY SPLINE having been first duly sworn, testified as follows: I was an A. B. on board this vessel. On Tuesday after leaving Cardenas we had a pretty strong wind; the top-gallant sails and some small sails were taken in. The first I noticed her leaking was Monday night. On Tuesday the water was gaining rapidly. We broke one pump Tuesday about dinner time, and then we pumped with one pump as long as we could. On Tuesday night we pumped up to somewhere near midnight; we then went aft and told the Captain we were played out pumping, and he'd better make ready the boats; he did so and we left the ship. I don't know exactly what time it was. We were about three miles away from the ship when she went down. She went away.

Q. Do you undertake to say that you saw her sink?

A. No, sir; we lost sight of her.

Q. Wasn't that owing to the mist or fog?

A. I couldn't say what it was owing to; it was foggy weather at that time,—that day and that night I was in the Captain's boat. I am at the Sailors' Home. I couldn't say what time Tuesday night we knocked off pumping. After we got the boats ready, we pumped after that. We

got the boats over the side in the night time, and then we went to pumping again.

WILLIAM HAHN having been first duly sworn, testified as follows: I was in the starboard watch. On Wednesday morning we left the ship. We left off pumping in the night; I can't tell just the time. We kept pumping all the time. One pump was broken Tuesday morning, in the Captain's watch; we had only one pump to work with all day Tuesday, and we pumped so heavy we couldn't pump any more, and we went aft and asked the Captain to make ready the boats. We left the ship in the morning. After we left the ship we only saw her a little while and she goes away. I didn't notice how long the ship remained in sight after we left her. After we were away I saw her no more.

Q. Was that owing to the fog?

A. It was good weather—it was clear; but we were in these small boats and the sea was high, and we didn't want to stay around much when the vessel was going down.

JOSEPH ANDERSON having been first duly sworn, testified as follows: I was an A. B. on board the Brothers' Pride. I joined her in Cardiff. We left Cuba on Monday the 5th of May. The first day was fine, we had a good stiff breeze. On the next day, Tuesday, it was a fine day—there was no storm. On Tuesday we commenced making water and were pumping all day, and the axle of the pump broke Tuesday about dinner time, and we only had one pump left. I repaired the pump, but we couldn't use the other pump at all. Tuesday evening at six o'clock they sounded the pump and there was twenty-two inches of water. So we pumped until eight o'clock on Tuesday night, but the water was increasing in the hold; so then I went to the Captain and said, "what are you going to do; perhaps the ship will all at once break to pieces, and what were we going to do?" We were excited, and hungry and frightened, and we thought the vessel was going down, and the Captain said then to me to put the boats out. After eight o'clock we put the boats out. We left the ship the next day. The boats were all right alongside the ship. We pumped as long that night as we could but it was no use. We got in the boats about six o'clock in the morning. I was in the mate's boat. We then pulled away from the ship. It seems to me as if the ship sank, but I could not tell. She was full of water when we left her. About ten o'clock we lost sight of her. She must have gone down, because we couldn't see her at all after dinner. We had dinner in the boat. We stopped pumping at eight o'clock, and didn't pump any more until we left the ship. The pump was broken in the morning about ten o'clock.

Q. You didn't pump during the night at all?

A. No one pumped after eight o'clock. We were in and out of the boats all night. The reason we didn't save our clothes was that nobody would go below for fear the ship might sink. The break in the axle of the pump was a solid fresh break; it was no flaw. It broke while the pump was in use.

Arico Acosta, who is present, states that he is the consignee of the cargo; that there were eight hundred and sixty-three hogsheads of melado in the cargo; that their average weight was about one thousand





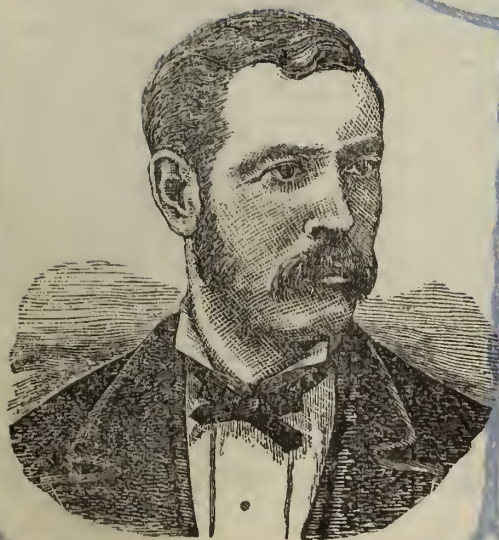
WM. PUGSLEY, A.M.



SILAS ALWARD, A.M.



S.R. THOMSON, Q.C.



JOHN KERR, ESQ.



D.S. KERR, Q.C.





six hundred pounds ; and that the cargo was shipped by Washington & Co. of Cardenas, and consigned to him.

THE FINDING of the Court read as follows :—

From the testimony of the master and crew, almost all of whom have been examined before us we find that the Brothers' Pride was a wooden bark, nearly thirteen years of the burthen of four hundred and forty-two tons. She sailed from Cardenas on Monday a. m., the 5th of May, 1879, bound for New York with a cargo of melado, in casks, weighing in all between five and six hundred tons. She is stated to have been well found, tight and in good condition and was not overloaded. On the first day with the wind from the north-east and moderate weather she made fair progress and did not leak more than usual. On the following day there was a strong breeze from north-east and east north-east which increased in force towards midday with a heavy cross sea, in which the ship is stated to have labored and strained much. She carried, however, all sails, except top-gallant sails. This weather continued until about eight o'clock p. m., when it moderated. In the early part of Tuesday the ship was found to be making more water than usual, which increased during the day, all hands being kept at the pumps—at least during the latter part of Tuesday. Late on this afternoon, according to the master, but, according to the other witnesses, about noon, or even earlier, the port pump broke down, leaving one pump only available. The leak still increased until midnight, when, the well being sounded, there appeared to be about five and a half feet of water in the hold. About six a. m., on Wednesday the 7th, the master and crew abandoned the vessel (then estimated to be in 28, north latitude) in the ship's tow boats, and steered for the Florida coast, about forty-five or fifty miles distant. They landed the next afternoon on the beach about thirty-five miles north of Cape Carnaveral. Within less than an hour of leaving her, the ship, according to the master and some of the hands, sank ; others merely say they lost sight of her.

The testimony of the witnesses in regard to several points is conflicting, and the whole of it, including the master's and mate's statements, is wanting in clearness and precision notwithstanding the recent occurrence of the circumstances in question. Unhappily the log book was lost at the time the crew landed, and we have been thus deprived of the record which it would have furnished of the events of Tuesday. The statements made as to the time of sounding the well and the depth of the water in the hold are variant and little dependence can be placed on them.

It is not quite certain at what time the boats were launched for the purpose of quitting the ship. Some of the witnesses state it to have been near midnight, others at about 8 p. m. on Tuesday, after which time, according to one witness, no pumping was done, but according to the master and others, the sound pump was kept at work—at all events, until it was found that there were five or six feet of water in the hold, when no further effort appear to have been made to free the ship.

It appears that the crew remained in the boats alongside nearly all night, coming on board and returning again from time to time, until they finally left the vessel about six a. m. on Wednesday, at which time, several witnesses assert that there were eleven or twelve feet of water in the hold.

We find it difficult, from the evidence before us, to account for so serious a leak as was sprung by this vessel, considering the nature of the wind and weather, which she met with on the sixth, and which ought not to have resulted in such serious consequences to an ordinary sound and seaworthy vessel.

The ship was coppered, and it is stated by the master that she had been partially caulked and put in order at Cardiff, and some damaged copper replaced before sailing on her last preceding voyage from thence to Cuba with a cargo of coals, during which voyage she proved sound and seaworthy. But this vessel was nearly thirteen years old, and it is probable that unsuspected weakness in some part of the hull below the water line or the possible starting of a butt may have caused a leak of so disastrous a nature as that in question. In regard to the disabling of one of the pumps, which became useless, we think it right to remark that some means should have been provided before the ship proceeded to sea for guarding against or for remedying just such an accident as the one in question.

In view of all the circumstances of the case we regret to say that, in our judgment, the master of this vessel was wanting in energy and determination not having made more strenuous efforts to reduce the leak by other means than a single pump

and appears to have abandoned at quite too early a period the hope of saving his ship. Upon an examination of the chart it appears to us, if at eight p. m. on Tuesday, the ship had been headed for the shore, and skillful and efficient efforts made to keep the leak under instead of allowing her to stand on her course gradually filling with water for nearly ten hours (from eight p. m. on Tuesday until six a. m. on Wednesday) she might possibly have reached Brunswick or Jacksonville, or at the worst she might have been beached where a considerable amount of property would have been saved.

On the whole we consider that the conduct of the master, Wm. H. Tower, in connexion with the circumstances which resulted in the loss of the ship was and is deserving of severe censure, and we adjudge that he be reprimanded accordingly.

(Signed.)

E. M. ARCHIBALD,

H. B. M. Consul General, President.

JOHN HADDERWICK,

Master S. S. Anchoria, of Glasgow.

ARCHIBALD YOUNG,

Master Ship Simla, of Liverpool, England.

The foregoing judgment having been read in open court, and in presence of the master, Wm. H. Tower, he was publicly reprimanded in accordance with it.

(Signed.)

E. M. ARCHIBALD,

H. B. M. Consul General, President.

The finding being against Captain Tower, the United States Lloyds, the underwriters on the cargo of the Brothers' Pride lost with the vessel, instituted additional inquiries into the loss of the vessel, through their legal adviser, Mr. Treadwell Cleveland. A summary of these inquiries will be found in Mr. Cleveland's evidence given at the trial. Having satisfactory grounds for believing that a fraud had been perpetrated on the underwriters of the vessel, cargo and freight, Mr. Cleveland, with the authority of the underwriters, immediately took steps to bring the case before the proper authorities. Before commencing proceedings he obtained the opinion of James MacLennan, Counsellor at Law, Ontario, with regard to how the action would lie. It is as below:—

1. The above ship was a British ship, registered in the port of St. John, in the Province of New Brunswick, Canada.

2. It is alleged that by orders of the Captain, William H. Tower of St. John, then on board, the vessel was scuttled at sea, on the voyage from Cardenas to New York, for the purpose of casting her away, in order to defraud the Insurance Companies who had large risks on the hull, cargo and freight.

3. The Captain is now residing at St. John and it is desired to proceed against him criminally. I am desired to advise generally on the subject.

4. The offence is created by the Imperial Act 24 and 25 Vic., c. 97, secs. 42, 43 and 46, which are as follows:—

SEC. 42. "Whoever shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel, whether the same be complete or in an unfinished state, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three years, or to be imprisoned for any term not exceeding two years with or without hard labor and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping."

SEC. 43. "Whosoever shall unlawfully and maliciously set fire to or cast away or in any wise destroy any ship or vessel with intent thereby to prejudice any owner or part owner of such ship or vessel or of any goods on board the same or any person that has underwritten or shall underwrite any policy of insurance upon such ship or vessel or on the freight thereof or upon any goods on board the same shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of



the Court, to be kept in penal servitude for life or for any term not less than three years, or to be imprisoned for any term not exceeding two years with or without hard labor and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping."

SEC. 46. "Whosoever shall unlawfully and maliciously damage, otherwise than by fire, gunpowder or other explosive substance, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same or render the same useless shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three years, or to be imprisoned for any term not exceeding two years with or without hard labor and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping."

5. The subject is also dealt with by the Dominion Legislature by stat. 32 and 33 Vic., c. 22, secs. 48, 49 and 52, which are almost in the same terms as the above secs. 42, 43 and 46 of the Imperial Act.

6. It may be a question whether having regard to the place where the alleged crime was committed the Dominion enactments would be regarded as extending to it. The question could not very well arise in the Ontario Courts, but there may have been decisions in the New Brunswick or Nova Scotia with which, however, I have no acquaintance.

7. The Imperial Statute 12 and 13 Vic., c. 96 provides that, "the prosecution and trial in the Colonies of any treason, piracy, felony, robbery, murder, conspiracy or other offence of what nature or kind soever, committed upon the sea or in any haven, river, creek or place where the admiral has jurisdiction shall be in the same manner as if such offence had been committed upon any waters within the limits of such colony, and that the punishment of any such offence shall be the same as if it had been committed in England."

8. By Imperial Statute 18 and 19 Vic., c. 91, sec. 21, it is enacted that "if any person being a British subject, charged with having committed any crime or offence on board any British ship on the high seas or in any foreign port or harbor, or if any person not being a British subject charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any Court of justice in Her Majesty's dominions, which would have had cognizance of such crime or offence if committed within the limits of its ordinary jurisdiction, such Court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits, provided that nothing contained in this section shall be construed to alter or interfere with the Act of the 13th year of her present Majesty, c. 96."

9. By a still later Imperial Act 30 and 31 Vic., c. 124, sec. 11, it is enacted that "if any British subject commits any crime or offence on board any British ship or on board any foreign ship to which he does not belong, any Court of justice in Her Majesty's dominions which would have had cognizance of such crime or offence if committed on board a British ship within the limits of the ordinary jurisdiction of such Court, shall have jurisdiction to hear and determine the case as if the said crime or offence had been committed as last aforesaid."

10. It has been held that a person is found within the jurisdiction within the meaning of 18 and 19 Vic., c. 91, when he is actually present there whether he has gone there voluntarily or has been brought there against his will. *Regina v. Lopez*, *Regina v. Suttler*, 4 Jur. N. S. 98, 27 L. J. M. C. 48, 7 Cox C. C. 431.

11. Unless the accused could by some means be brought within the jurisdiction of some other Court he could not be tried elsewhere than at St. John under the authority of the 18 and 19 Vic. But if, as I suppose, Tower is a British subject, he may be proceeded against under the later statute 30 and 31 Vic. in any Court in Canada, just as if the crime had been committed within the jurisdiction of that Court.

12. Ordinarily, however, criminal proceedings are commenced by information before justices of the peace, and there is no provision in our law for the initiation of proceedings in such a case as this before justices of any locality but that where the accused is or is suspected to be at the time.

13. The provisions of our statutes in aid of the Imperial enactments are Dominion stat. 32 and 33 Vic., c. 30, secs. 3 and 29, which are as follows:—

SEC. 3. "In all cases of indictable offences committed on the high seas or in any

creek, harbor, haven or other place in which the admiralty of England have or claim to have jurisdiction, and in all cases of offences committed on land beyond the seas for which an indictment may be preferred or the offender may be arrested in Canada, any one or more justice or justices for any territorial division in which any person charged with having committed or being suspected to have committed any such offence, shall be or be suspected to be, may issue his or their warrant (D. 2) to apprehend such person to be dealt with as therein and hereby directed."

SEC. 29. "In all cases where any person appears or is brought before any justice or justices of the peace, charged with any indictable offence, whether committed in Canada or upon the high seas or on land beyond the sea, and whether such person appears voluntarily upon summons or has been apprehended with or without warrant or is in custody for the same or any other offence such justice or justices before he or they commit such accused person to prison for trial, or before he or they admit him to bail, shall in presence of the accused person (who shall be at liberty to put questions to any witness produced against him) take the statement (M.) on oath or affirmation of those who know the facts and circumstances of the case and shall put the same in writing, and such depositions shall be read over to and signed respectively by the witnesses so examined, and shall be signed also by the justice or justices taking the same."

14. There is no express provision for bringing from one Province to another for trial a person against whom proceedings are commenced by indictment. The process for arresting a person in such a case is a bench warrant. The Courts are all Provincial and by some oversight no provision is made for the execution of that warrant in another Province. The defect has probably not been observed because proceedings are now almost universally commenced before justices, and their warrants may by endorsement be enforced anywhere in the Dominion.

15. The result is, that in my opinion, the accused can be indicted in any of the ordinary Criminal Courts in any Province of the Dominion, and if found within such Province may there be tried. But there are no compulsory means for bringing him from one Province to another. There seem no means of commencing proceedings against him before justices but in the Province and locality where he is or is supposed to be at the time. The Criminal Courts usually sit three or four times a year. When the Courts are not sitting the only thing that can be done is to lay information before a justice and have the party committed for trial. If the party could be tried at Halifax I should think it the most convenient place. I do not know when the next Court sits there but could easily find out by telegraphing.

(Signed.)

JAMES MACLENNAN.

Toronto, Ont., January 22nd, 1880.

#### CRIMINAL PROCEEDINGS AGAINST CAPTAIN TOWER COMMENCED.

Early in January, 1880, Silas Alward, Esq., Barrister at Law, St. John, was retained by Mr. Treadwell Cleveland on behalf of the United States Lloyds and the Great Western Insurance Companies, for which he was acting, to take the preliminary steps for an investigation into the alleged scuttling of the *Brothers' Pride*. Mr. Alward advised substantially that as the Captain was a British subject, and the alleged offence was committed on board a British barque on the high seas, the offence was cognizable in our Courts. Acting on this advice, application was made to the Police Magistrate of the City of St. John, for a warrant for the arrest of William H. Tower, which was granted on the fourth day of February, 1880, the following joint information being made at the Police Court, St. John, N. B., before Humphrey T. Gilbert, Esq., Police Magistrate of that city:—

The information and complaint of Tracey C. Roberts, Treadwell Cleveland and Howard C. Thomas, taken the second day of February, in the year of our Lord, eighteen hundred and eighty, before the undersigned H. T. Gilbert, Esq., Police



Magistrate for the police district in the city of St. John, in the city and county of St. John, and first this deponent, Tracey C. Roberts, saith that he was mate on board the Canadian barque Brothers' Pride on her last voyage, which was from Cardenas, in the island of Cuba, to New York, in the United States of America; that the said barque was laden with what purported to be a cargo of melado, which is a thick molasses or molasses boiled to the consistency of crystalization; that while on the said voyage, that is to say on the high seas, on the seventh day of May, in the year of our Lord one thousand eight hundred and seventy-nine, the said barque was abandoned by her officers and crew, she being in a leaky and dangerous state. A few hours after such abandonment she disappeared from view and deponent believes sank in the ocean. Deponent is informed that the said barque is a Canadian barque, registered at the port of St. John; that she was four hundred and forty-two tons register, and that her registered owners were Acalus L. Palmer, Daniel J. McLaughlin, jr., and Charles A. Palmer, all of the City of St. John.

And this deponent, Treadwell Cleveland, saith that he is the representative of an association called "The United States Lloyds," consisting of individual underwriters who are and were engaged in the business of marine insurance at the office of that name in New York; that a policy was underwritten at that office effecting insurance on the said alleged cargo, in the sum of \$38,000, which was paid to the consignee on proof of shipment and loss in or about the month of June, A. D., one thousand eight hundred and seventy-nine, to a person named Ricardo Acosta, the consignee mentioned in the invoice and bill of lading; that there was also insurance upon the freight of said vessel, as deponent believes, as follows: In the Great Western Insurance Company of New York, the sum of \$5,000; in the Insurance Company of North America of Philadelphia, the sum of \$2,000, and in London or Liverpool offices, as deponent believes, the sum of £500, making in all about the sum of \$9,500. On the hull there was insurance, as deponent is informed and verily believes, as follows: In the Great Western Insurance Company of New York, the sum of \$5,000; in the New England Mutual Insurance Company of Boston, the sum of \$2,000; in the Universal Marine Insurance Company of London, the sum of £500, and in other London and Liverpool offices, the sum of £2,350, making in all of insurance on the hull of about the sum of \$21,250. There was also, as deponent believes, insurance on the alleged advances: In the Anchor Insurance Company of Toronto, the sum of \$1,500; in the Orient Mutual Insurance Company of New York, the sum of \$1,500, making a total of insurances on freight, hull, cargo and advances of \$71,750.

And this deponent, Howard C. Thomas, saith that he was second mate on board the said barque, on the said voyage from Cardenas to New York; that at Cardenas, immediately previous to the sailing of the said barque, in accordance with the instructions of Wm. H. Tower, who was master of the said barque, deponent purchased an auger; that the said Wm. H. Tower told deponent the vessel would never reach the United States, that it would not do to take the cargo to New York; that after the said vessel left Cardenas, on the first day of the voyage, at eleven o'clock in the forenoon of the said day, which would be the fifth day of May, under the orders of the said captain, Wm. H. Tower, deponent bored a hole in the said vessel, about an inch and a quarter in diameter, with the said auger, in one of the air streaks aft in the run. On the afternoon of the same day deponent bored a second hole with the same auger alongside of the first hole, plugging up the second hole with a plug furnished by the Captain. On the morning of the following day, the sixth of May, under the command of the Captain, deponent bored a third hole alongside of the two holes which he had previously bored. On the afternoon of the last mentioned day, under the orders of the Captain, deponent bored a fourth hole, pulling out the plug from the second hole. After the boring of each of the holes deponent reported to the Captain what he had done; that all the holes were bored under the directions and commands and with the full knowledge of the said Captain, the said William H. Tower.

And this deponent, Tracey C. Roberts, said that although not having any suspicions at the time that the vessel was being destroyed, as he verily believes at this time she was destroyed, yet in applying his memory to the situation, in remembering that the contents of the barrels swashed about as though they were a liquid of a thin consistency, certainly very much thinner than melado, and remembering the



lack of energy exercised on the part of the Captain, that the said vessel was destroyed on the high seas, and from the statement of the said Howard C. Thomas, deponent believes that the said Howard C. Thomas and the said William H. Tower feloniously, unlawfully and maliciously did destroy the said ship.

And this deponent, Treadwell Cleveland, saith that he believes that the said William H. Tower and Howard C. Thomas, both acting together and each in league with and aiding the other on the fifth and sixth days of May, in the year of our Lord one thousand eight hundred and seventy-nine, on board a certain Canadian barque called the Brothers' Pride, of which the said Acalus L. Palmer, Daniel J. McLaughlin, jr., and Charles A. Palmer were the registered owners, on a certain voyage upon the high seas, then being upon the high seas on a voyage aforesaid, feloniously, unlawfully and maliciously did scuttle, cast away or destroy the said barque Brothers' Pride, with intent thereby to prejudice the persons that had underwritten or did underwrite the policies of insurance upon such barque or vessel and on the freight thereof and upon the goods alleged to be on board of the said barque and with intent to defraud, contrary to the statute in such case made and provided.

(Signed.)

TRACEY C. ROBERTS,  
TREADWELL CLEVELAND,  
HOWARD C. THOMAS.

The confessed principal in the affair, Howard C. Thomas, the late boatswain of the Brothers' Pride, was ordered into custody by the magistrate. Silas Alward, Esq., appeared for Mr. Cleveland, who, as already stated, was acting in the interests of the underwriters in New York. Philip Palmer, Esq., appeared for the prisoner, Captain Tower. The magistrate then adjourned the case until the eleventh, with the understanding that another adjournment would be made on that date until the eighteenth, when, if both parties were not ready, a still further postponement would be made.

Captain Tower was admitted to bail in \$10,000. Thomas being a minor and also being the principal in the alleged scuttling, the magistrate offered to take bail in \$50,000—two sureties of \$25,000 each. Thomas was unable to obtain sureties and was committed to jail to await the preliminary examination. On the twenty-seventh the examination before the Police Magistrate was commenced. Mr. John Kerr appeared for the prisoner. He objected to the confessed accomplice, Howard C. Thomas, giving evidence in the case, and quoted to substantiate his objection Archbold's Criminal Evidence, page 291 and *Queen vs. Payne et al.* Law Reports, vol. 1, Crown Cases Reserved, page 349. The magistrate overruled the objection and the investigation proceeded. The examination was concluded on March first, and the evidence being read over to the accused he pleaded not guilty and submitted the following protest against the Police Court proceedings:—

I, William H. Tower, say that I protest against the manner in which the proceedings of this examination have been taken, and submit that the course pursued by the prosecution, and allowed by Your Honor, in proceeding against me separately, and not jointly, and calling Howard C. Thomas as a witness, a person charged with me for committing the offence stated and set forth in the information is, I am advised and believe, wholly without precedent and against law so far as a preliminary examination is concerned. That I was led to believe by the information and the warrant by which I was arrested, as well as by the recognizance and the bail entered into by me, that Howard C. Thomas and myself were jointly charged with committing the alleged offence, but when the examination took place I was tried separately and not as stated in the information. That I am advised and believe that no precedent can be shown for the manner in which the prosecution has been

conducted in a preliminary examination, in allowing Thomas to be called as a witness when he is jointly charged with me for committing the offence, and according to the information, is the principal offender; that I object to the way the hearing of this charge was conducted on these grounds, and further that the matter is beyond your jurisdiction to hear; that I am entirely innocent of the charge against me; and verily believe that the prosecutors in this case have, by promise of reward to each of the witnesses, procured them to give their present testimony, which is wholly false.

The magistrate said this hearing was merely a preliminary inquiry, and if he gave the accused his liberty it would not set him free for the Grand Jury would consider the case. The accused and the accomplice, Thomas, were then committed for trial at the next sitting of the St. John County Supreme Court. Captain Tower was admitted to bail as before and Thomas returned to jail.

The Grand Jury assembled on the 12th March and found a true bill against Captain Tower and H. C. Thomas. The following is a copy of the indictment:—

The jurors for Her Lady the Queen upon their oath, present that William H. Tower, on the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-nine, on board a certain British barque or vessel called the Brothers' Pride, of which A. L. Palmer, D. J. McLaughlin, Jr., and C. A. Palmer were the registered owners, on a certain voyage upon the high seas, then being upon the high seas, feloniously, unlawfully and maliciously did scuttle and cast away and destroy the said vessel, with intent thereby to prejudice the persons and companies following, that is to say: John Crosby Brown and other subscribing underwriters at United States Lloyds, who had before then underwritten a certain policy of insurance upon goods on board the said vessel; the Great Western Insurance Company of New York, who had before then underwritten a certain policy of insurance upon the said vessel, and also a certain policy of insurance on the freight thereof; the Insurance Company of North America, who had before then underwritten a certain policy of insurance on the freight of said vessel; the New England Mutual Insurance Company, who had before then underwritten a certain policy on the said vessel; the Anchor Insurance Company of Toronto, Canada, who had before then underwritten a certain policy of insurance on the said vessel; and the Orient Mutual Insurance Company of New York, who had before then underwritten a certain policy of insurance on the said vessel, which said several policies were then in full force and operation against the form of the Statute, in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said William H. Tower, on the said sixth day of May, in the year aforesaid, on the high seas feloniously, unlawfully and maliciously did scuttle, cast away and destroy a certain other British barque or vessel called the Brothers' Pride, the property of A. L. Palmer, D. J. McLaughlin, Jr., and C. A. Palmer, against the form of the Statute in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said William H. Tower, on the seventh day of May, in the year aforesaid, on board a certain other British barque or vessel called the Brothers' Pride, the property of A. L. Palmer, D. J. McLaughlin, Jr., and C. A. Palmer, on a certain voyage upon the high seas, then being upon the high seas, feloniously, unlawfully and maliciously did set fire to the said vessel, with intent thereby to prejudice the persons and companies following, that is to say: John Crosby Brown and other subscribing underwriters at United States Lloyds, who had before then underwritten a certain policy of insurance upon goods upon the said vessel; the Great Western Insurance Company of New York, who had before then underwritten two certain policies of insurance upon the said vessel, and also a certain policy of insurance on the freight thereof; the Insurance Company of North America who had before then underwritten a certain policy of insurance on the freight of the said vessel; the New England Mutual Insurance Company, who had before then underwritten



a certain policy of insurance on the said vessel; the Anchor Marine Insurance Company, of Toronto, Canada, who had before then underwritten a certain policy of insurance on the said vessel; and the Orient Mutual Insurance Company of New York, who had before then underwritten a certain policy of insurance on the said vessel, and also other persons and companies, who had before then underwritten certain policies of insurance on the said vessel, and on the freight thereof, and on goods on board the said vessel, which said several policies in this court mentioned, were then in full force and operation against the form of the Statute, in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said William H. Tower, on the day and year last aforesaid, on board a certain other British barque or vessel called the Brothers' Pride, the property of A. L. Palmer, D. J. McLaughlin, Jr., and C. A. Palmer, on a certain voyage on the high seas, then being upon the high seas, feloniously, unlawfully and maliciously set fire to the said last mentioned vessel, against the form of the Statute, in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that Howard C. Thomas, on the sixth day of May, in the year aforesaid, on the high seas feloniously, unlawfully and maliciously did scuttle, cast away and destroy a certain other British vessel called the Brothers' Pride, the property of A. L. Palmer, D. J. McLaughlin, Jr., and C. A. Palmer.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said William H. Tower, upon the said felony, scuttling, casting away and destroying the said last mentioned vessel, was committed, to wit, on the fifth day of May, in the year aforesaid,—did feloniously and maliciously incite, move, procure, aid, counsel, line and command the said Howard C. Thomas, the said felony, scuttling, casting away and destroying of the said last mentioned vessel, in manner and form aforesaid, to do and commit against the form of the Statute, in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said William H. Tower, on the said sixth day of May, in the year aforesaid, on the high seas feloniously and unlawfully and maliciously did scuttle and cast away and destroy a certain other British barque called the Brothers' Pride, the property of A. L. Palmer, D. J. McLaughlin, Jr., and C. A. Palmer, with intent thereby to prejudice the following persons, namely: John Crosby Brown and other persons and firms, subscribing underwriters at United States Lloyds, who had before then underwritten a certain policy of insurance upon the goods on board. The said last mentioned policy was then in full force and operation against the form of the Statute, in such case made and provided, and against the peace of our Lady the Queen, her crown and dignity.

The trial was fixed for Monday the 15th March, on this date the indictment was read over to the prisoner who pleaded not guilty. Mr. John Kerr moved for an adjournment of the case until the May circuit, on the grounds that his client was not prepared for trial and wanted witnesses from Cuba. He presented his own and the accused's affidavits to this effect. Wm. Pugsley, Esq., continued to act for the Crown in the case, and S. R. Thomson and Silas Alward, Esqrs., appeared in the interests of the underwriters. An affidavit to combat that presented by Mr. Kerr was made by Mr. Cleveland. In order to consider the motion and to allow the counsel more time to prepare the case, and after deliberating upon the facts represented, the Chief Justice, refusing to grant the motion made by Mr. Kerr, adjourned the Court until the twenty-ninth. On this date the Court resumed its session, and Mr. Pugsley moved that the prisoner be arraigned and the case proceeded with. At the request of Mr. D. S. Kerr, the Court adjourned until after dinner, when Mr. John Kerr made an application again for the postponement of the case until the May Circuit, and presented several affidavits to substantiate his motion. An



affidavit of the prisoner, claimed that it was essential to his case to have the original of the certified copies of the evidence taken at a Naval Court in New York, concerning the abandonment of the Brothers' Pride, and asserted that he had been unable to obtain important witnesses from Cardenas. The Naval Court proceedings, the affidavit also asserted, were on file with the British Board of Trade in London, and the British Consul at New York had been applied to for a certified copy of the original proceedings, but these he had not in his possession. The affidavit also stated that the limited time since the finding of a bill by the Grand Jury, had not given sufficient opportunity to prepare the case. Mr. Kerr, on finishing the reading of the affidavits, attempted to read an alleged certified copy of the evidence taken at the Naval Court inquiry in New York.

Mr. Thomson objected and said that it was a question if the proceedings were admissible as evidence at all.

The objection was sustained and Mr. D. S. Kerr arose to argue the propriety of the evidence, and submitted it for His Honor's consideration. The case, Mr. Kerr, said, was one of vital importance to his client. He then pointed out the necessity of bringing Thomas C. Yannes as a witness from Cardenas, but, said Mr. Kerr, Cardenas is a far away port; it is quite a walk there—the extreme end of South America—"No, no, North America," added several in a breath. Mr. Kerr stood geographically corrected claiming his error was merely *lapsus lingue*. He then went on to show that the counsel for the prosecution had been working their case for some time while he had only been retained in the case for a few days. His client was trembling in his shoes, on the brink of destruction. It was absolutely necessary to give the accused a chance. Mr. Kerr affirmed that there was not the slightest difficulty in showing that the vessel had been loaded with actual melado and that the cargo was properly stowed and that the insurances were properly effected. He prayed that His Honor would give the report of the Naval Court proceedings a thorough persual.

Mr. Thomson, on behalf of the underwriters of the vessel, disputed Mr. Kerr's motion for postponement.

Mr. Pugsley, Crown counsel, agreed with Mr. Thomson and argued that the Naval Court proceedings were not legal, having been conducted without judiciary aid, without the knowledge of the underwriters and behind their backs.

Mr. Kerr again arose to push his motion, and after some further discussion His Honor consented to adjourn until morning, and in the meantime he would carefully consider the certified copy of the evidence taken at the Naval Court inquiry in New York city. In the morning Chief Justice Allen delivered his decision upon the motion made by Mr. Kerr for a postponement, saying the motion was made on two grounds: First, the necessity of having important witnesses from Cuba; second, the necessity of having an official certified copy of the evidence taken at a Naval Court inquiry held in New York, into the loss of the barque Brothers' Pride, a copy of these proceedings being claimed to be essential to the prisoner's case. On the first ground His Honor could not see that the witnesses from Cuba could have any testimony to make bearing on the case. The affidavit had failed to show that their testimony was at all important on

this ground, therefore the prisoner had failed to show any good reason for postponement. The second ground—the necessity of the Naval Court proceedings—His Honor considered was not sufficient for postponement of trial. A copy of the proceedings, though not actually official, was now in the possession of Mr. Kerr, and this document the prosecuting counsel had agreed to admit as evidence ; therefore the second ground taken, His Honor claimed also, failed to be of sufficient cause for a postponement.

Mr. D. S. Kerr then called for Solicitor General Crawford. He did not recognize Mr. Pugsley as Solicitor General or even representing that gentleman. He would publicly request that Howard C. Thomas, mate of the Brothers' Pride, also accused of scuttling and casting away the vessel, be arraigned and requested His Honor to order his arraignment. His Honor replied that he had not power to arraign the prisoner, and could not see that the presence of Thomas would be of advantage to his (Mr. Kerr's) cause.

Mr. Kerr then arose and asked where was there power to begin or end. Continuing, he intimated that the case was a private one and conducted by the insurance companies of New York. It was a matter of importance to him (Mr. Kerr) to have Thomas arraigned.

Mr. Pugsley replied and said he felt rather keenly Mr. Kerr's insinuations. The trial, he emphatically stated, was not a private trial. It was public, and any applications made by Mr. Kerr would be treated just the same as if made to the Attorney General himself.

Mr. D. S. Kerr rising said he had no hostile feelings to Mr. Pugsley, nor did he impute any unkind insinuations to that gentleman. He wanted fair play and that he expected to have.

Mr. Thomson said he wished it emphatically understood that in no respect was this trial a private trial. He hoped Mr. Kerr would not make that insinuation again. Mr. Kerr said his learned friend need not wax warm about the matter. There was no need of an exhibition of temper.

His Honor then decided the question, stating that he had no power or control over Mr. Pugsley, and could not compel the crown council to arraign Thomas.

The selection of a jury was then proceeded with and considerable difficulty was found in finding twelve qualified men. The regular panel was soon exhausted, both prosecution and defence challenging for cause and peremptorily, and no little discussion ensued at times between both counsel.

During the process of challenging Mr. Kerr said that if a juror had read the evidence as published in the papers, that juror was not qualified. Continuing he stated that a law should be passed prohibiting reporters from the police courts. Mr. James E. Hamm, of Carleton, on being challenged said he had stated his opinion in the case as favorable to the prisoner. Mr. Kerr then withdrew the challenge, though Mr. Hamm declined to serve on the jury. However, Mr. Pugsley having no objection to make, Mr. Hamm was sworn.

During the selection of the jury Mr. Kerr denied Mr. Pugsley's power to stand aside jurymen.

Mr. Thomson showed that it was the right of the Crown, no matter



by whom represented, to stand aside jurors or challenge them for cause. He (Mr. Thomson) was a Q. C., and would exercise his rights as such. His Honor overruled Mr. Kerr's objection, and jurors Lahey, O'Mahoney and Potter were challenged peremptorily.

The panel now being exhausted Mr. Pugsley asked for an order under the Act permitting the Sheriff to summon additional jurors or talesmen. His Honor acquiesced, and the Sheriff called six additional jurors. Of this batch Robert C. Courtney and W. R. McKenzie were sworn, the remaining four being challenged peremptorily. The Sheriff then summoned three others, all of whom were challenged and stood aside. The Sheriff was then ordered to summon three more. One of these, Mr. George F. Smith, said he was a director in one of the insurance companies, and being directly interested did not wish to serve. He was considered disqualified. Over one of the other three, Capt. Robert Letteney, quite a discussion arose. Mr. Thomson, on behalf of the prosecution, challenged the juror because he was a ship master, and that it was said he had expressed an opinion. Mr. Letteney being the twelfth juror, was subjected to examination by triers who found him qualified and he was accordingly sworn. The jury were then stated to be as follows: Samuel A. Dixon; Joseph Ruddock; George B. Hegan; James B. Coleman; Robert H. Sancton; James Vanburen; James E. Hamm; William Roxborough; Robert A. Courtney; William R. McKenzie; Thomas Gilmour; Robert Letteney. The clerk of the court then read the indictment against the prisoner, Wm. H. Tower, who was already arraigned in the criminal's dock. Mr. Pugsley, representing the Crown, addressed the jury and pointed out the serious nature of the charge. It may, said the counsel, involve a penalty for life or for a limited number of years. The indictment had been prepared under two sections. The counts charge the prisoner with scuttling and casting away a vessel, and also with having set fire to the same vessel and with insuring for more than the cargo was worth. He then went on to cite the particulars of the case. The vessel Brothers' Pride sailed from Cardiff to Cienfuegos in January 1878. On this voyage the prisoner disclosed a plan to scuttle the vessel after taking in a cargo at Cardenas and while on her voyage to New York. The cargo purported to be melado. He would show, however, that the substance was an inferior article and not melado that the vessel was loaded with. At Cardenas it would be shown that the prisoner, Tower, had offered Howard C. Thomas \$100 to scuttle the vessel by boring holes in the waterway. He would show that Thomas had obeyed his captain's instructions and bored holes in the hull of the vessel, which while gradually sinking the other hands were pumping steadily, and after being water-logged she was fired and it was supposed afterwards sank. This was, said Mr. Pugsley, briefly an account of the affair. He would show that the vessel might have been put back to Cardenas, and being very valuable and insured for a large amount, though a small vessel, it would have been to the captain's interest to put back to port. In December, 1878, she was insured in one office for £500 stg., in another office, the Universal Marine of London, for £500; on the 31st December, 1878, in Merchants Marine of London for £150 stg.; on 24th December in Lloyds of London for £300; on 30th December (same year, same date) £300; on 2nd

January, 1879, in Thames and Mersey Insurance Company for £500; on 8th January, 1879, in another company for £400; on 9th January, 1879, again £100. In all these instances the vessel was valued at \$4,500. On the 18th April, 1879, additional insurance was effected in the Union Mutual of Boston for \$2,000. In the American policies the vessel was valued at \$16,000. Another American policy was issued on the 6th January, 1879, in the Great Western Insurance Company of New York, for \$3,000, and on 18th, in same company, one for \$2,000. All these policies covered the voyage from Cardiff, Wales, to the West Indies and thence to a port in the United States, and hence were in force when the vessel was destroyed. The total amount of insurance on the vessel was \$21,500. Then there was insured upon the advances in Anchor Marine Insurance Company of Toronto \$1,500 and also in Orient Mutual Insurance Company, New York, \$1,500. Upon the freight there was insured in April, 1879—the freight from Cardenas to New York—in Lloyds, England, £300, and on the 22nd of March, '79, in the North American Insurance Company, \$2,000; also in March, '79, in the Great Western of New York \$5,000, making a total of insurance on the freight from Cardenas to New York of \$8,500. Mr. Pugsley produced the bill of lading, signed by the prisoner, of 863 hogsheads, at \$5.25 per. hhd. Had the vessel arrived safely at New York, the cargo would have been valued at \$4,530.75. The insurance on the freight was \$8,500. He then called their attention to an additional insurance which he claimed was the most important point against the prisoner. An insurance was effected on the cargo on the 23rd April, 1879, in United States Lloyds, New York, for \$38,000. In the policy the cargo is described as 863 hogsheads of melado. The insurance on vessel, freight, and advances was over \$71,000. To save this valuable vessel the captain had evidently made no effort. The evidence depends, said Mr. Pugsley, upon the statements of an accomplice, Howard C. Thomas. He then referred to the stowage of the cargo, which he would show was done in a loose instead of compact manner. He alluded to the auger by which the boring was done, and to other corroborative evidence which would be produced. He spoke of the alleged accomplice, Thomas, and said it was another corroborative fact that Thomas should have placed his trunk in another vessel before leaving Cardenas. He then pointed out the inferiority of the cargo, in which the steward had washed his hands. This he could not have done had the cargo been melado. An enormous fraud had been perpetrated on the underwriters, as he would in the course of the proceeding show. Mr. Pugsley said the prisoner had made exhibitions of sudden wealth by building improvements in Carleton since the time the scuttling had occurred. He then denied the case was a private one. It was his sole desire to conduct the case on the principles of justice and that only. The court then adjourned for dinner.

When the court opened at 2 o'clock this afternoon Mr. Pugsley offered as evidence a number of policies of insurances on the vessel, the Brothers' Pride; also the certificate of registry of the vessel.

Mr. D. S. Kerr objected to the admission of these papers on the grounds that the prisoner, Tower, knew nothing of the insurance on the vessel, and to the other document on the ground that it did not support



the indictment, being the registry of a colonial ship and not of a British ship, there being a considerable distinction, Mr. Kerr stated, between the two.

His Honor overruled the objections, saying he would receive the registry as evidence. The certificate was then read and stated that on June 25th, 1878, 43 shares of the vessel were owned by A. L. Palmer, 13 shares by Daniel J. McLaughlin, Jr., and 8 shares by C. A. Palmer. The certificate also stated that the vessel was abandoned at sea on the 28th May, 1878, and that the certificate of registry was cancelled, delivered up and forwarded to London in the same month.

Mr. Kerr said it was queer that the certificate could be here and in London both.

Mr. Thomson replied that the certificate and registry were different things. The register was in St. John and forever.

Mr. Kerr's objections were noted and the first witness called was Mr. C. E. L. Jarvis, representing in St. John several of the alleged frauded insurance companies. He knew the Anchor Marine Insurance Company of Toronto, Canada. Witness is the agent of the company in St. John.

Mr. Kerr objected to the prisoner being connected with the insurances. His client went to sea on wages and knew nothing about the insurances. It was unfair that this inference should be brought to bear against the prisoner. Can it be pretended, can it be possible, asked Mr. Kerr, that the prisoner has anything to do with the insurances? Can it touch us any way when we are as innocent of the charge as a new born babe? Continuing to advocate his objection Mr. Kerr said a man could destroy his own ship if he was so inclined.

Mr. Pugsley contended that the evidence was clearly admissible.

Mr. Thomson contended that if a man destroys another's ship at sea it is clear that he commits an act for which there are consequences and the consequences should be made obvious. If the prisoner destroyed the vessel feloniously it should be shown who he intended to defraud, whether the owners or underwriters. The owners would probably take the stand before the case closed and prove that they had not given the prisoner orders to destroy the vessel. Then, if this evidence is adduced, it is obvious the prisoner's intention was to defraud the underwriters. It was absurd for Mr. Kerr to say in this Supreme Court that a man has a right to destroy his ship at sea if he chooses.

Mr. Kerr replied to Mr. Thomson and claimed that a man had a right to destroy his property if he chose. He respected Mr. Thompson whose ingenuity was always ready, but Mr. Kerr hoped he was always ready to catch him. He would conduct the case as his judgment justified him. It was an important case and great responsibility rested upon him (Mr. Kerr.) He emphatically objected to going into policies of insurance before the charge had been proved against his client. A man cannot intend a thing that he is entirely ignorant of, and the prisoner knew nothing of these insurances. There was nothing to show that the prisoner knew to what amount the vessel was insured, the learned counsel must not assume that his client was guilty. Before the case was through he would put a different face on it.

His Honor said his opinion was that the evidence relating to insurances ought not to be received at present.

Mr. Pugsley then withdrew the testimony. Mr. Jarvis vacated the stand and the Court adjourned for dinner.

In the afternoon the confessed accomplice to the alleged crime, Howard C. Thomas, was called. The Sheriff was ordered to bring Thomas from jail, where he had been confined for some time awaiting this trial.

Mr. Kerr objected to Thomas being brought in until His Honor had issued a *habeas corpus*. This was accordingly done and the witness brought into Court, but before taking the stand Mr. Kerr wished the witness sworn on his *voir dire* believing, he said, that the witness did not believe in an oath and was therefore incompetent to give evidence. He wished to question his credibility whether or not he believed in a God, in the Christian religion or in the Gospels.

Mr. Thomson thought it was not right to hand the witness over to the tender mercies of Mr. Kerr. It was time to question the witness on his cross-examination, with regard to his crediulity, &c. Mr. Thompson held that the law had been changed with regard to the swearing of witnesses.

After some further controversy His Honor allowed Thomas to be sworn on his *voir dire*, and Mr. Kerr proceeded to question him. The witness said he could read the Scriptures, believed in the Old and New Testaments, in a God who can punish for wrong acts.

Mr. Kerr—Do you know what these punishments are?

Mr. Thomson—He can hardly answer that.

His Honor—I think so too.

The witness continued: He believed in a future state of rewards and punishments. He believed in the moral obligation of an oath.

Mr. Kerr.—Have you always believed in the moral obligation of an oath?

Mr. Thomson objected that this carried the prisoner back to his infancy.

The question was overruled by His Honor. The witness then continued his direct evidence. He stated that he was twenty-one years of age last October. His parents are dead but did live in Nova Scotia. He commenced to go to sea when ten years old, but since, had not been going to sea continuously. He has made no longer voyages than from here to England. He first became acquainted with the prisoner in June, 1878, having met him in Philadelphia, where witness has an uncle. Witness was boarding in Philadelphia, his uncle paying his board bill, and went to Philadelphia at his uncle's request. His uncle's name is Corning. He was at Philadelphia about two months before meeting Captain Tower. When the Brothers' Pride was at Philadelphia witness first met Captain Tower as watchman on board Tower's vessel. In this vocation he was employed about one month when Captain Tower asked witness if he wanted to go with him. Witness accepted the offer, signed articles and went to sea with Tower. About the 30th June, 1878, the Brothers' Pride sailed for Valencia, Spain, with a cargo of oil and arrived there in due time. From Valencia she sailed for Cape Breton for orders, thence to Bathurst, arriving there in September or first October, 1878. Here they took in a cargo of deals and sailed for Penarth Roads, Wales, for orders, on 28th November following, arriving at Penarth Roads in



December, and on orders went to Abermouth Docks, a little below Bristol. Here the cargo of lumber was discharged. The vessel then proceeded to Cardiff and took in a load of Welsh coal, about five hundred and seventeen tons, a full cargo for the vessel, which was a barque. She drew about fourteen feet of water with the coal cargo in. From Cardiff, sailed for Cienfuegos, Cuba, about 25th January, 1879, and arrived at Cienfuegos about 1st March, having had rough weather during the first twenty days of the voyage, then entered the trade winds. Discharged cargo at Cienfuegos, occupying about two weeks. Then proceeded to Cardenas, on the other side of the Island, arriving about middle of April in ballast. Here discharged some of the ballast and took in cargo of melado or what was supposed to be melado. He had never been in Cuba before. The melado was held in casks. It took two or three weeks to ship the cargo and discharge the ballast. The vessel was partially loaded inside the cays and partially outside by lighters; took in one lighter load outside of the cays. Witness handled nearly every cask of the cargo. There were eight hundred and sixty-three casks put on board, he thought. They took in between seven hundred and fifty and eight hundred casks inside the cays. He was not present when the lighter load was taken on board outside the cays. He was ashore. The cargo was hoisted in, the mate superintending the loading. Witness helped to hoist in some of the casks, but did not help to stow it below. As far as he could see down the hatch the cargo was stowed first-rate. There was a four or five foot space forward not stowed closely. This space was approached by a narrow hatch under the fore-castle deck. More casks could have been placed in this vacancy. It was a fine day when the vessel sailed from Cardenas. Aft, the cargo was stowed in almost every shape, and an individual could crawl along quite a distance. The cargo was stowed so as to keep it from shifting, but in a queer way, and differently aft from what it was forward. Some was stowed athwart ships and some fore-and-aft. Down near the keelson she was stowed close enough, but ascending there was plenty of room. When the vessel left Cardenas the crew consisted of Tracy Roberts (mate), H. C. Thomas (second mate), George Hall (steward), Jerry Spline, Joe Anderson, John Trisinski, and three others who went by the names of Henry, Charlie and Willie. He did not know their surnames. This was the same crew that sailed from Cardiff. Witness was second mate on board; was in the habit of dining in the forward cabin, and though the captain had a private cabin, he dined forward with witness, and the first mate dined there also. Witness had opportunities on the voyage from Cardiff for private conversations with the captain. About twenty days before reaching Cienfuegos, when it was his watch on deck, commonly called the "dog watch," from 6 to 8 o'clock, p. m., witness asked the captain if he was likely to go to Philadelphia. The captain replied that the vessel would never reach any port in the United States after she left Cuba, and at the same time remarked that there were plenty of ledges to run her on, subsequently pointing out the ledges on the chart. What time this occurred witness could not say. It was not the same evening. The captain showed him the charts in the forward cabin. Witness inquired: What about our lives? The captain replied that there were plenty of coast guard schooners about the coast by which to

effect an escape. To this witness made no reply. The charts were shewn witness when in the cabin getting a piece of marling. The captain called him and showed him the ledges on the chart where he intended to run the vessel. Witness did not remember making any reply to the captain's remarks. There was no person present in the cabin when the chart was exhibited, when about twenty days before arriving at Cienfuegos. Had no other conversation with the captain before arriving at Cienfuegos. One night after leaving Cienfuegos and after rounding Cape Antonio the captain told witness to look out for a ledge. Witness was on the watch that night. It was a misty kind of a night: the moon was shining. Witness replied: All right, I'll look out, and was keeping a lookout to leeward. After a while the man at the wheel sung out, "breakers ahead."

Mr. Kerr objected to the latter sentence being accepted as evidence, and could not see what it had to do with the captain, who was down below. Such testimony was fixing the crime on his client.

His Honor, failing to see the objection in as strong a light as Mr. Kerr, took the statement as evidence, subject to Mr. Kerr's objection.

Witness continued: The man at the wheel cried out, "Breakers to weather bow," when witness was watching over the opposite side—to leeward. When the man at the wheel shouted "breakers ahead," witness told him to put the helm hard up. Just then the captain and mate and steward came running up. The Court then adjourned until morning.

His Honor, at the request of Mr. Kerr, admonished the witness to converse with nobody about the case and forbid him seeing any newspaper or receiving letters concerning the case.

In the morning Thomas resumed his testimony. He said, when the captain rushed up, he wore ship and mate and steward went below. The captain told witness he wished she had struck. Witness replied that it would be rather a hard place to get off in boats. He had no personal knowledge of the insurances though the captain had told him she was insured for three times her worth. At this time the captain said he had received a letter from old Mr. Palmer, telling him to sink her, that he (Mr. Palmer) had a new vessel for him (the captain). The captain also said he was going to get a large sum of money before he left the West Indies—half there and half when he arrived in St. John. The captain did not remain long on deck. The man at the wheel was about twenty feet from his position on deck. The captain's words to witness were said in a low tone. When mention of the letter from Mr. Palmer was made, the vessel was sailing from Cardiff to Cienfuegos, but on what part of the voyage it was he could not say. Nothing more occurred of note on the voyage. Witness was ashore one day with the captain who pointed out the cargo that was going on board. The casks or hogsheads appeared somewhat new. He did not know what melado was; but saw what was in some of the casks. It was like sweetened water, bitter to the taste, but had not a nice smell, and did not smell like molasses. It was thin as water and if it got vent would run out very easily. It was a dark brownish color, though some was of a lighter color. The stuff would swash about inside the casks. When the casks were rolled the stuff would swash, at least all that he handled did, and he handled nearly every cask.



Several of the casks broke, some of them on deck, others when being put into the hold of the vessel. One cask burst its head out on deck, what burst it he could not tell. There was one cask, half full, standing on deck for three or four days. While prying it round on deck, the head broke, and he up-ended it. The stuff in it was thin and water-like. He bored one cask to get some for the men to put in their tea. Nobody gave him permission. One of the men carried it away to the cabin in a tin. Witness would not care to drink much of the stuff. It was as thick as common molasses. Witness has seen some real melado in Cleveland's office, New York. This what he saw was thick like molasses sugar. [At this point several tins of melado were exhibited to the Court.] One tin was shown to witness. The contents of the tins, witness said, did not compare with the material in the casks. [Other samples, in bottles—those used at the Police Court investigation—were produced. The contents of these bottles were in substance somewhat thinner than that in the tins.] Witness continued: He told the captain that the cargo was queer looking stuff. The captain replied it was never to go to the United States. Witness made no answer. While ashore in Cardenas—the Friday night before leaving—the captain and witness went to a restaurant to get their suppers. The captain asked witness, while waiting for their suppers, if he would bore the vessel for \$100. Witness replied that if the captain said so he would, but that he wanted no \$100. After finishing their suppers the captain offered him money to stay ashore. Witness said he did not care about it, and shortly afterwards took his boat and rowed out to the J. T. Smith, of Parrsboro. There was a number of Provincial vessels at Cardenas at that time. The second mate of the J. T. Smith, Clarence Barnes, was a friend of witness. He stayed aboard the Smith all night and the next night witness and Barnes went ashore in the Brothers' Pride's boat, and remained ashore until Sunday morning with Tower, Barnes and Barnes' brother and himself who were in a big bar-room drinking. Captain Tower called witness aside and gave him \$5, telling him to buy an auger of 1 $\frac{1}{4}$  inch size. He took the money, the captain remarking to get it the size of a treenail. The captain said that if the vessel was picked up it would be thought some of the treenails had dropped out of her. The five dollars was in Spanish paper. Witness purchased the auger on the same street as the bar-room was on. The shops are open in Cardenas on Sunday the same as on other days. He took the auger to the boat, according to the captain's instructions, and laid it in the main sheets. He gave \$4 for the auger which had no handle. It was wrapped up in paper, the boring end being exposed. After this he returned on board the J. T. Smith with Captain Tower, captain Barnes and Clarence Barnes. They reached the Smith about noon and remained on board her until twelve o'clock that night. Later the two captains returned to the shore and came back to the Smith about twelve o'clock that night. As soon as they came on board, witness and captain Tower bade the captain of the T. C. Jones good-bye, and proceeded to the Brothers' Pride, their own vessel. He knew a man named Riley. It was about one o'clock when they reached the Brothers' Pride. Witness put a trunk on board his vessel without the captain's knowledge. Witness sent a small trunk on board the T. C. Jones, before leaving

Cardiff. The trunk contained a quadrant, some books and a cruet stand which he purchased in Bristol. He gave the trunk to the second mate, Geo. Riley, and brought back Riley's trunk on board the Brothers' Pride.

Mr. Kerr strenuously objected to such evidence. His client was no party to the swapping of trunks. This His Honor admitted, but considered the evidence relevant. Mr. Kerr said it was the intention of these men to hang the prisoner behind his back.

Witness continued: Riley's trunk was an empty one and old looking. The T. C. Jones was loaded with sugar and bound for New York, and was about ready to sail. A week after witness arrived in New York he received his trunk from Riley. The Brothers' Pride sailed from Cardenas on Monday morning, May 5th, 1879.

Mr. Thomson—Witness, did Captain Tower know what you did with that cruet stand you purchased in Bristol? A. I suppose he did. I gave it to his wife.

This evidence prisoner's counsel claimed was irrelevant. It was admitted, however, subject to objection.

Witness proceeding, said he "chucked" some of the stuff in the casks on the skids to make the casks run easy. The skids were fenders alongside the vessel. He washed his clothes in the contents of one cask and so did the steward, the material being thin enough for washing purposes. When at Cienfuegos there were other vessels in port, plenty of them. [Chart of the Island of Cuba produced and different points shown to jury.]

Mr. Kerr objected to Mr. Thomson pointing out the places in question for the witness.

Witness then took the map and, though he said he knew nothing about a chart, pointed out Cienfuegos. The chart was then shown to the jury. Witness resumed: Captain Tower went to Cienfuegos from Cardenas by train and was absent several days. The captain did not say why he went. Vessels were loading with molasses and sugar at Cienfuegos when witness was there. There were more vessels at Cienfuegos than at Cardenas. At the former port vessels loaded at wharves. When the captain told witness he was to get a large sum of money witness forgot. It was a fine day when they took in the last lighter load outside the cays. The wind was from north north-east when the vessel sailed out Cardenas harbor with the yards braced up on the starboard tack at about six miles an hour. With the eight hundred and sixty-three casks on board the vessel drew a little deeper than when loaded with coal. They sailed about six o'clock in the morning and were out of sight of the island during that night. The weather was fair and atmosphere warm during the first day at sea. Monday the captain said the vessel must not be out too long before commencing to leak, and said further that it was time witness was at that job. The captain gave witness half of a wax candle. Witness asked if there was any danger of getting himself in trouble. The captain replied there was no trouble about the matter as long as he was doing it under his (the captain's) orders. Witness took the candle and went down the lazarette, between the two decks. He could not stand up in the lazarette. There was a bulk head between the captain's cabin and the lazarette. The water closet was close to the bulk head on the port side and close to the captain's cabin. A bulk head is a partition



between the captain's cabin and the lazarette. Witness had a plan of the place in jail.

Mr. Kerr objected to the plan. His Honor said the witness had a right to illustrate his evidence by plan or otherwise, and he would accordingly allow the evidence. The judge and prisoner's counsel argued the propriety of the evidence while the witness left the stand to secure the plan from the jail. It was produced, and in answer to Mr. Kerr, witness said he had made the plan on Mr. Cleveland's instructions. He made it last Wednesday. He saw Mr. Cleveland after the Grand Jury had found a bill against him but did not recollect seeing Mr. Cleveland the day the bill was found. Mr. Cleveland told witness to draw up the plan, but gave no directions how it should be drawn.

Mr. Kerr objected to the plan being received as evidence. He could see what was in the back-ground, and considered the evidence dangerous to his case.

His Honor could not, however, see the apprehended danger then, therefore thought the plan admissable. He would note the point but could not reserve it.

Mr. Thomson requested His Honor to stop Mr. Kerr's insinuations. He was everlastingly making insinuations, and apparently they were against Mr. Cleveland. When Mr. Cleveland took the stand, Mr. Kerr would have a chance of testing that gentleman's credibility.

Mr. Kerr arose, and denied in emphatic tones that he was in the habit of dealing in insinuations. Mr. Thomson need not threaten him (Mr. Kerr.) Mr. Cleveland was a gentleman, a member of the profession, and from New York. He would state plainly it was a private prosecution. He deprecated the idea of insinuation. However, after this little brush between the two counsel, harmony prevailed, the learned Judge casting a little oil on the troubled waters. The plan was then shown to the Judge and jury and positions of the lazarette, bulk head, cabin and water closet pointed out by witness.

Resuming, witness said: The lazarette extended from side to side of the vessel, and was under the wheel and aft of the captain's cabin, and was entered by a hatch on the starboard side of the vessel. The distance between the stern of the vessel and the partition of the lazarette was not more than six feet. The lazarette was about six feet high. Access could be had from the lazarette to the hold. There was a hatch without a combing that led to the hold. Flour, oil, paint, etc., from the lazarette could be taken out by this hatch. From the floor of the lazarette to the bottom of the hold would be about twelve feet. When witness went down the lazarette hatch and through the hatch into the hold, he placed his candle on a cask and bored a hole through the air-streaks with the auger he bought at Cardenas. Previously he put the auger in the tool chest without a handle, and when he took the auger out it had a handle in it. All hands were on deck when he descended into the hold. After he bored the water came in. The side of the vessel was easily approached. He put oakum in the air-streak to deaden the noise of the water. He put the oakum between the skin and side of the vessel. He then came up to the deck and told the captain he had bored a hole. This was Monday, the 5th May. The captain said all right. The wind, sea and breeze

were about the same as when the vessel started. Same day about three o'clock in the afternoon the captain instructed him to bore another hole. He went down, the captain giving<sup>a</sup> him a plug to put in the second hole, bored a hole alongside the first boring and the water came in. He then plugged it up as ordered and returned to the deck and told the captain what he had done. The captain said all right.

The Court adjourned for dinner.

In the afternoon Howard C. Thomas continued his evidence and said, after plugging the second hole he did not recollect having any further conversation with the captain that day. The next forenoon, May sixth, he received orders from the captain to go down and bore another hole. He obeyed the order and descended to the hold as previously, and bored another hole in the air-streak near the previous boring. He left this hole running, the water coming in rather fast. The crew began pumping on Monday afternoon. The mate was, he thought, the first one to sound the pumps which were worked nearly all that night, the captain being in bed. The vessel was kept pretty free until Tuesday afternoon, when one of the pumps broke at the axle, in fair play, for all witness knew. An attempt was made to repair it but it would not work. This left one pump for use. In the afternoon of Tuesday the water gained some, and about three o'clock, in the cabin, the captain said to witness to go through the water closet to the hold, so that no one would see him, and to rip the boards off the partition between the water closet and hold. The captain assisted him to open the partition, and told him to go through to the hold and bore again and pull the plug out of the second hole. He obeyed the instructions and returned to the deck, leaving the four holes running and the water coming in rather rapidly. He reported to the captain that the four holes were running. The captain replied all right. It continued fair weather. They then pumped the first part of Tuesday night and found the water gaining all the time. Gauged the depth by a piece of marling. The captain took observations on Wednesday and was up all Tuesday night, when the same sail was set on the vessel as when they left Cardenas. About 3 a. m. got the boats out by the captain's orders. It was not daylight at that hour. Witness was in the captain's boat. All hands got their things into the boats; also a bag of biscuits, keg of water, sardines, salt fish, etc. It was fair weather when the boats were hoisted out. They hauled in foresail and mainsail, clewed up the fore and main royal and fore and main top-gallant sail, before getting into the boats. An ordinary breeze was blowing at the time. After getting into the boats, they rowed away for an hour or two, and then returned to the vessel. The boats were lowered at about three a. m., and shoved off at about five a. m. During the pumping the captain told witness to tire the men out at the pumps, all he wanted was for them to knock off pumping. The men were not ordered to stop pumping, but he (witness) told them and the mate told them it was no use pumping any more. This happened just after the boats were got out. He did not know of any attempt being made to find the leak. He heard of no one receiving orders to search for the leak. There was no signal of distress floated, nor was there any attempt made to return to Cuba. The men worked at the pumps after the boats were lowered, and until pretty near daylight. It



was about ten a. m. that the captain took the observation. They were in the boats at the time and the weather was clear. After returning to the vessel in the boats, the captain ordered witness and steward to butt the bow ports out, but they couldn't get a skid down the hold and were, consequently, unable to succeed. He went aft and got a sledge, but was not successful in butting the ports. The captain then told him to take the auger and bore holes. Previous to this he shouted to the captain, who was at a distance in the small boat, that he could not butt the ports. He then took the auger, as instructed by the captain, and proceeded below, and with Hall, the steward, and William, the young fellow, bored several holes in the bow ports. Through these holes the water came in pretty rapidly. They then came on deck, got into the boats and rowed round the vessel several times. Still she didn't sink. The steward told the captain it was dangerous to let her lie that way, and then the captain told witness and Hall to go on board and set her on fire. They went aboard and down the lazarette where witness got the paraffine can and a bunch of matches. He poured the oil all over the lazarette and deck; the steward got an axe and made some chips; he also poured oil in the rudder trunk, and the steward touched it with a match, and the vessel was soon in a blaze. The steward took the can and, with witness, went into the captain's cabin, poured oil over the beds, bureau, sofa and floor, and set them on fire. Then they proceeded to the forward cabin, and poured oil around there, and set that on fire; then went into the forecabin, poured oil about there, and set it on fire; then went up on deck. The captain shouted that if she gave a jump to leap over the stern and he would pick them up. They afterwards, about midnight got safe into the boats. This was on Wednesday. The fire burned first-rate, went up good, and he saw the fire run up the rigging, burn the sails, and before he left the vessel was pretty well destroyed. They then lay by for a while and pulled and sailed for Cape Canaveral, coast of Florida. The captain said the Cape was distant about forty miles. The night, on Wednesday, was pretty rough. There was thunder and lightning. The coast of Florida, where they landed, was uninhabited, and about forty miles north of the Cape. The mate's boat upset in the breakers but all hands got ashore. He did not know if the captain saved the log book, though, he had ample time to secure it. Everything in the captain's boat was landed safely. Among the incidentals he did not notice the log book and did not notice the captain throw away anything from on board the vessel. The first night on the coast they turned their boats up and made tents of them. It was about four o'clock, on Thursday, p. m., and before dark, when they landed. They slept on the beach that night, and started next morning to find the light house, but failed to find it, and returned to the coast about six o'clock in the evening. They then went to sleep and next morning went to work and got the boats over into the lagoons, and shipping their food, etc., pulled down the creek and saw a little hut. Asked an old woman if there was a village anywhere. She pointed out a canal and after passing through that, she said, they would enter a river which led up to Titusville. Stopped at Titusville over Sunday, took two mule teams and conveyed the luggage to Salt Lake, thence to Jacksonville, where they boarded the City of Dallas and pro-

ceeded to New York. On the way to New York the prisoner said to witness not to tell of this, that it was a case of transportation. Witness asked where to? The captain said he might be transported fourteen years to the penitentiary. Witness did not remember making a reply. From New York he came to St. John *via* the Yarmouth, N. S. steamer. Shipped in this steamer at Boston. On arriving in St. John he went to Captain Tower's house, Carleton, but did not find him at home. Witness remained at Captain Tower's about eight days. Had no conversation with Captain Tower at his house about this matter. Captain Tower paid witness \$2, \$5 and \$20 at different times. He went to Captain Tower's house on invitation. The captain said he was having a new vessel built and offered witness a chance to go in her. There was no person present when he received the \$2, \$5 and \$20. The captain did not say what the money was for. Witness said he had received his wages previous to the donation from the captain. Witness went to Digby, stayed there several days and returned to Captain Tower's house, remaining there two or three days doing nothing. The captain said he intended repairing his house, to raise it up two feet. Witness returned from New York about first June. The last time he returned from Digby was about the last of June. The prisoner commenced repairs on his house about the middle of June, and said the repairs would cost him \$2,000 or \$3,000. Thomas witnessed some of these repairs being done. It was along in the latter part of June that witness received the \$20. The money was paid in the presence of nobody but themselves, and in the captain's woodshed. Witness went home again to Digby, and after a lapse of three weeks returned to Captain Tower's. The captain knew why witness did not go to Philadelphia to his uncle from New York. Witness was standing on the steps of the Eastern Hotel, New York, when he told the captain, steward and mate that he intended going to Philadelphia that night. This was some time in the month of May, 1879. The captain then approached witness and asked him if he remembered the offered present of \$100. Witness said he had not thought much of the present since; that if he went to Philadelphia, where his uncle was, he would get a good vessel. The captain said it was not necessary to go to Philadelphia, to come to St. John where he would have a vessel, and give him, witness, a chance. Witness and the mate came to St. John together. But for this he would have gone to Philadelphia. Witness paid his own passage to St. John. From the vessel the captain took three bags of clothes, chronometer, weather glass, sextant, barometer and compass, but no log book that he saw. The captain sold a chest and big overcoat to the steward while on the voyage from Cardiff to Cienfuegos. In the same boat with him the steward took a blue bag which formerly belonged to the captain. While at Cardenas, the captain spoke about having the cargo stowed so that he could have a hatch cut underneath his berth, so as to get down into the bottom of the vessel to bore her. This hatch was on the starboard side. The captain also spoke of having the cargo stowed far enough away from the bow ports so as to get one of them out. Witness made no reply. After returning from Digby, in the latter part of June, witness went to Captain Tower's and assisted on the repairs on the house. He continued at this work a few days and, seeing no signs of



the promised new vessel, concluded to go away. He told the prisoner he was going to Philadelphia, and asked for money enough to go there with. The captain informed witness he must be all right when he could sport on other people's money. Witness replied that it was he (the captain) who was sporting on other people's money. He did not get the desired amount, and went again to Digby and stayed there a couple of days, and shipped with Captain Amero in the brig Willie, for Wexford. Before leaving Digby, he received a letter from Captain Tower. He received two letters, the first in the latter part of June, while at Barton, near Weymouth, N. S., the second in July, at the same place. He read the the first letter and then burned it up. His cousin, Geo. McNeil, read this letter. McNeil lived at Barton and got the letter from the post office.

Prisoner's counsel objected to the contents of the letter being related.

His Honor said he could not shut it out as evidence. The case was indeed hard against the prisoner, but that fact could not hinder the evidence. His Honor said he had never tried a case of the kind before.

Mr. Thomson hoped his Honor would never again have to try such a case.

Witness then related the contents of the letters. They requested the witness to come over as soon as he liked, that he (the captain) had not received his papers from the West Indies and that next day he was going over to Mr. Palmer to get some money and would send witness some. Both letters were seen by his cousin. Witness then went to sea and was absent about four months, arriving here on his return voyage on the 5th November. He then went home and remained there until the 15th December, which day he came over the Bay to St. John and put up at the St. John hotel. He saw Captain Tower on the 19th, at the hotel, talking to Tracey Roberts, the mate. Witness had no previous knowledge of Roberts being in St. John. Captain Tower asked witness to have a drink and then invited him to his house, whither he proceeded, and shook hands all round with the family ; stayed there about an hour ; afterwards met Captain Tower in Carleton on the street, and had another drink with him. Then, accompanied by Tower, he came across the ferry and left Tower talking to Mr. Charles Palmer, whom witness recognized in Court. In the evening he returned to Captain Tower's house and took tea there. Had a game of cards, and later returned to the city with Tower. In the morning Roberts was going to New York to give evidence about the sinking of the vessel. Tower wanted to know of witness if money would not stop Roberts. Witness replied that he thought it was too late. Tower said if Roberts went the New York people would want his, (witness'), evidence. Roberts told witness of his being sent for by New York people. He did not know that this matter had come out before this interview with Roberts. What Roberts told witness he repeated to Tower. That night, after coming over to the city, witness was sent for at the St. John hotel to go to the Park hotel to see a Captain Brown, an agent of the underwriters.

Was it at this time you determined to make a clean breast of the affair? asked Mr. Thomson.

Mr. Kerr—"Clean breast! I want to stop this outrage, your Honor." Mr. Kerr threatened to quote a passage from Solomon.

The question was unanswered. Witness continued, saying that he went to New York the next morning, the 18th, and returned to St. John in the latter part of January. He had lived at one time at Beaver River, N. S. He received a letter from Captain Tower, while in jail. It had gone over to Barton and was then forwarded from there to witness in jail. [The letter was produced and identified by witness as Captain Tower's own handwriting.] There was also produced a certificate of character from the prisoner to the witness, which read as follows:—

This is to say that Howard C. Thomas has sailed with me as second mate or boatswain for about eleven months, and I have found him to be sober, honest and attentive to his duty.

(Signed.)

WM. H. TOWER,  
Master Mariner.

Carleton, July 10th, 1879.

The letter received by witness while in Digby from Tower was then submitted as evidence. It read as follows:—

ST. JOHN, Jan. 23rd, 1880.

*Mr. Howard Thomas,*

Sir: Please come over to St. John at once if able; if not, let me know without delay, as I want you. Your expenses won't be anything here, for you need not stop on shore.

Yours, etc.,

WM. H. TOWER.

The Court adjourned until morning. The court room was crowded with spectators all day.

When the court opened in the morning all available space was occupied by spectators, many of whom had arrived some minutes before the Judge took his seat on the Bench. Mr. Thomson had a few more questions to ask the witness, who said the captain gave him an epitome and guide books on the voyage to Valencia. The books were in jail. When below, boring the holes, there was a strong smell from the cargo—a suffocating smell—which nearly knocked him down at one time. He could not state the name of the man who kept the bar-room in Cardenas where he and Captains Tower and Barnes were drinking. It was not Yannes, this man kept a ship chandlery. The steward saw witness and prisoner in the W. C. when breaking the bulkhead partition. The steward stood and looked in, and the captain shut the door in the steward's face. Witness came to St. John to give evidence at the request of Mr. Cleveland.

Mr. Thomson—On what arrangement or on what conditions did you come? Objected to by Mr. Kerr and objection sustained. The epitome and guide books were produced. Mr. Thomson said he produced the books as a matter and process of the commencement of the corruption and intimacy between witness and Captain Tower. Mr. Kerr objected. His Honor received the evidence subject to Mr. Kerr's objection.

Mr. D. S. Kerr then began Thomas' cross-examination. After the vessel was discharged he got ashore and remembered being at Titusville, Florida. Here the captain went to get his protest noted and was at Col. Titus', who was an underwriters agent, or something like that. He did not know that Col. Titus was a notary public. He went before Mr. Hughes, a notary in New York, to make a protest with Captain Tower



and crew. Witness could not identify Mr. Hughes who was in Court. [A book was then produced and witness indentified the stewards, Charles Lutzs, his own, Tracey Roberts', Jerry Spline's, Captain Towers and the other signatures of the crew of the Brothers' Pride.] He did not mention having been before a Naval Court in New York. He was before a vice-counsel in New York. He did not see a person named Captain Hadderrick or Captain Young at the Court, at least he could not identify these people. It was a little examination or kind of Court, and held on the 23rd of May, 1879. Before this Court he was questioned, took an oath, signed his name, gave evidence on oath and signed his name to his testimony. There was no trouble about this case until December, 1878. On the night of the 17th December he had an interview with Captain Brown at the Park Hotel. Proceeded there with Tracey Roberts, who had a conversation with Captain Brown. Witness and Roberts went to New York the very next morning, Mr. Brown paying the passage. Mr. Cleveland, who was looking after the insurances, he saw the next day after arriving in New York. He gave a long statement to Mr. Cleveland, and heard Roberts talking to Cleveland. He got \$25 a month, his way paid and his board paid for going to New York, but received no reward for his services, he got paid for his labor. He receives \$25 a month for every month that he is employed by Mr. Cleveland. He is employed by Mr. Cleveland to give evidence and to do nothing else. Besides this money he had his board paid. He has seen Mr. Cleveland several times and talked to him several times about his evidence. He returned from New York about the 28th of January, and was in New York about 40 days. Roberts got his wages and board, he supposed, but he did not know anything about a large reward that he was to get. Witness and Roberts and Mr. Cleveland made a joint information at the City Police Court. [Witness' deposition produced and read.] He made no mention to the police magistrate about the burning of the vessel. This information was given after Mr. Cleveland, Roberts and witness had been together about 40 days. He said nothing to the police magistrate about butting or boring the bow ports. On the 3rd February witness was arrested and put in jail, and on entering the jail Mr. Cleveland accompanied him. They talked about the case. This first day of his incarceration he saw Mr. Cleveland four or five times in jail. The information was made in the morning and he was incarcerated at noon. Mr. Cleveland called to see him in a friendly way and talked of the case. [Here Mr. Kerr requested the prisoner not to smile.] He did not recollect Mr. Cleveland taking down any statement in writing relating to this evidence. Mr. Cleveland did not to his recollection read any statement to him concerning his testimony. He saw Mr. Cleveland at the Hotel Dufferin and received from Mr. C. a written statement to read over—the statement being previously made by witness. Tracey Roberts also received a statement which he too had read before going to the police office. He had not seen Hall the steward receive a statement. Hall called on witness at the jail more than once—three or four times. They talked over the evidence probably three times. Hall was not in the jail at any time Mr. Cleveland was there. Mr. Cleveland, Roberts and witness had interviews together at the Hotel Dufferin, and Mr. Cleveland

then and there wrote down a statement made by witness. Witness read a statement to Mr. Cleveland before going to the police office. Mr. Cleveland did not read Roberts' statement to witness. Since his incarceration Roberts called on witness at the jail three or four times and one of these occasions Roberts was there with Mr. Silas Alward who told witness to keep up good spirits. Mr. S. R. Thomson and Mr. Silas Alward conducted the case at the police court for Mr. Cleveland. Witness did not know the emolument Messrs. Thomson and Alward received. The examination began at the police court about the 28th February. He did not see Mr. Cleveland during the progress of the examination at the police court. The police magistrate cautioned witness to have no conversation with anybody during the delivery of his evidence. He read the account of his evidence in the newspapers, and stated this fact at the examination. He received several letters from Mr. Cleveland while in jail. He wrote back to Mr. Cleveland several times. The day before going before the Grand Jury he had a conversation with Mr. Cleveland. This day Mr. Cleveland saw witness perhaps three or four times. He was not before the Grand Jury more than one day. The indictment was found against him on the 12th March, and on this day he saw Mr. Cleveland, who asked questions about evidence. Mr. Cleveland called again on the following Sunday. This day he wrote a letter concerning his evidence. He received a letter from Mr. Cleveland on the 13th. Never saw Mr. Cleveland in jail since the 14th. He forwarded his letters through Tracey Roberts. At this point Mr. Kerr was cautioned by the Court not to make any preliminary remarks upon the evidence. Witness stated in his direct evidence that he knew nothing about the insurances; that the prisoner told him he had received a letter from old Mr. Palmer to sink the vessel. He did not give this evidence at the Police Court, nor did he say anything about the captain's intimation that he expected money from the West Indies, nor of having fears of getting into trouble; nor did he state anything about his command to tire the men out at the pumps or to cease pumping. He said nothing about the suffocating smell of the cargo at the Police Court examination. Mr. Corning, his uncle, in Philadelphia, is a partner of Mr. Younger. He was a cabin boy in a vessel for 18 months, and was altogether 2 years in this service. Afterwards he held a cook's position. Before joining Captain Tower he was an A. B. or able bodied seaman. "Bachelor of arts," suggested Mr. Kerr. Witness when he employed with Captain Tower was 19 years old. He signed articles with Captain Tower, and gave his age to the shipping master as 19, but Captain Tower who was present said to put down 20. Witness knew nothing about navigating a vessel. He boarded two months at Philadelphia at his uncle's expense. The vessel when loaded with coal was level in the water with the Plimsoll line.

The Court then adjourned for dinner and in the afternoon there was a very large attendance at the trial. The second mate, Thomas, continued his cross-examination. He said: Captain Tower was civil and kind to him while on board his vessel. The books were given him in a friendly way and with no secret intent. From Cardiff to Cienfuegos the vessel strained considerable, and found it necessary to pump her every watch,



sometimes every two hours. He had been at the West Indies before—at Martinique, when he was about seventeen, and before the mast. It was probably through the influence of his uncle and a stevedore, Mr. Gallagher, that he obtained his position on board the Brothers' Pride. The chart was again produced, on which he was unable to point out the rocks the captain intended to run the vessel. He knew nothing about navigation, but considered himself capable of taking charge of the helm. When rounding Cape Antonio the course was N. W. [Chart consulted.] Mr. Kerr, from an observation, was of the opinion the course was N. E. Witness knew nothing of the currents about Cape Antonio, nor of the winds. Captain Tower said to him, at that time, he was sorry she had not struck on the Cape. The vessel was rounding the Cape in ballast, and on her way to Cardenas for a cargo. The "breakers ahead," or when they made the ledge, was about ten o'clock at night. How near this ledge was to the Cape he could not state, nor could he say at what hour they rounded the Cape. There was a man at the bow, one amidships, and another at the wheel. On the voyage from Cardiff, when out about fifty days, the captain pointed out to witness on the chart, the rocks on which he wanted to run the vessel. Witness told his story to Mr. Cleveland last December. From Cienfuegos to Cardenas, the vessel carried a quantity of dunnage wood, but no skids—they were made after arriving at Cardenas. There was a good auger on board; its size he could not state. Up to this time he was never on a vessel that was loaded with sugar, melado or molasses, and had no knowledge previous to this time, how a vessel would smell when loaded with melado or molasses. He was never at Havana or Matanzas. The cays at Cardenas are shallow places that can only be passed over at high water. At high water a vessel can go close to the wharf. The Brothers' Pride was anchored about three miles from the wharves at Cardenas. The hogsheads that contained the cargo were apparently a little smaller than ordinary molasses hogsheads. The casks were on the wharves and he supposed came from a warehouse. The lighters carried from seventy-five to one hundred casks each time, and were hoisted in by a windlass. The casks came up sometimes too quickly and were lowered on the deck and then hoisted again into the hold. In this way witness stated that he handled nearly every cask. This time the captain was ashore. There were some suspicions about the cargo on the part of the stevedores. The captain did not stow the cargo, but witness saw him in the hold once or twice. The mate took part in the loading, being in the hold. Witness could not speak Spanish and could not understand what the Spanish stevedores said in Spanish. The steward understood Spanish. Some of the stevedores could talk English. Between fifty and one hundred casks a day were put on board. The dunnage wood came from on board another vessel. The wood was used for stowing the casks with. Tracey Roberts, the mate, would give receipts for the lighter loads. Witness did not hear the captain make any remarks about the material of the cargo. It was called melado by the hands on board, and the mate signed receipts for melado. He had never sailed through water like what was in those casks. All he knew about the stowage was what he could see down the hatch. Down the main hatch, as far as he could see, the casks were stowed fore and aft. A portion of

the cargo was stowed athwart-ships. He used the word athwart-ships in his examination at the Police Court in reference to the cargo. At the Police Court he said the cargo was stowed pretty snug, and that he did not know how many casks were in the wind tier. He did not recollect stating at the Police Court that the cargo was stowed athwart-ships. He had no previous experience in stowing a cargo of molasses. In the stern the casks were stowed athwart-ships and close to where he bored the celebrated holes. He was not present when the captain signed the bill of lading. Eight or ten casks of the cargo were stowed on deck. The cargo came from a warehouse near the wharf. He thought the mate told him that the charter party was getting \$5 per hogshead. He recollected the vessel touching her nose when hauling into the wharf at Cienfuegos. He could not say she received any injury. The witness knew nothing about the science of wind or what made them blow. It was warm at Cardenas at this time, and he did not know what effect the heat had on the winds. On leaving Cardenas the wind was blowing N. E. very light. He knew the difference between N. E. and N. N. E. The only rough weather they had was on the night they abandoned her. They left Cardenas on Monday; on Tuesday the pumps broke, and they abandoned her on Wednesday morning. The vessel might have held more forward and aft. He did not see any cask "busted" or smashed up, hoops and heads out. He saw the head of one cask fly out on deck; the cask was afterwards returned to the shore. Its contents were not swept off the deck, it soon ran off itself. There was a cask with its head out that stood upon its end on deck several days, exposed to heavy drenching rains and a scorching sun. Witness, with Captain Tower and others of the crew, at the office of Mr. Hughes, N. P., in New York, on the 22nd day of May, 1879, made a statement to the effect that he sailed from Cardenas on the 5th May, 1879, in the Brothers' Pride loaded with melado; that on the passage they experienced a rough chopping sea. He signed this statement, but did not think he swore to it. If the statement said there was a heavy wind blowing and that the pumps were disabled, that was true. If the statement said she strained and labored heavily, it was not true. He did not recollect swearing before the consul that he witnessed the vessel go down. The crew clamored with the captain to get out the boats about two a. m. Wednesday, May 7th, and had not to ask the captain more than once when he yielded to their solicitations. He could not say how much water was in the hold at two a. m. He made a statement before Consul Archibald at New York, and if in this statement he said she had only five feet of water in the hold it was not true. He did not recollect saying before the Naval Court that he could not assign a cause for the leak. He did not recollect saying to the notary that the leak increased about one foot per hour notwithstanding the efforts made by the crew to stop it. At five o'clock a. m. the vessel had about five feet of water in the hold. There was not twelve feet of water in the hold at five o'clock, but when abandoned there was about that quantity in her.

At this point Mr. Cleveland spoke audibly, and Mr. Kerr reminded that gentleman that he must not interfere; that he must remember he was in a British Court. Mr. Thomson on looking over the witness' evidence taken at the Police Court, claimed that Mr. Kerr was misrepresent-



the testimony, though he held it in his hand. This brush, however was drowned in a glass of water, which Mr. Kerr drank to the health of all, especially, he said, of his dear friends opposite. Witness continued, saying that if the vessel had 12 feet of water in her when abandoned, she would probably sink in about half an hour.

Mr. Kerr, then, apparently, soliloquized, to which mode of cross-examination Mr. Thomson objected. At this point the Court adjourned; but just previously Mr. John Kerr made an affidavit that Joseph Gannalo, an individual necessary to this case, had been arrested for taxes, and in his affidavit made an application to have him discharged.

In the morning the prisoner's counsel continued the cross-examination of Howard C. Thomas. Before resuming, the court ordered City Marshall Prince to discharge Joseph Gannallo from custody. The witness, Thomas, then took the stand and Mr. Kerr proceeded to cross-examine him, with the book of protests in hand. Witness said the port pump was broken, that the starboard pump was constantly worked but without decreasing the water in the hold. All hands, captain included, assisted in the pumping. Just before 12 o'clock, on Tuesday night, he saw the captain pump.

Mr. Kerr—Do you know what the Holy Evangelists are? A. The Bible, I suppose.

Mr. Kerr—You know that book contains God's commands and invokes vengeance upon any person who takes his name in vain by appealing to the Deity under oath. The truth, the whole truth, so help you God, is the oath, remarked Mr. Kerr. Witness subscribed to the evidence at the protest but did not think he had sworn to that evidence. If he had taken oath to it he swore to what was partially true and partially false. If he said in the protest that shortly after midnight he had sounded the pumps and found 5 feet of water in the hold, that might have been true, if he said the leak rapidly increased that was false; if at the rate of one foot per hour, that was false. The protest was read over to him and perhaps he did swear to it; he did not recollect swearing to it. The crank of the pump was broken on Tuesday morning, not the previous night. Any statement of this to the contrary was false. After the pump broke there was hope of saving the vessel.

Mr. Kerr—How was there any hope of saving the vessel? A. By going down and plugging the holes up and pumping her out. He did not say at the police court, that if there was 7 feet of water in the hold it would have drowned him. If this much water was in the hold he could have reached the holes and plugged them. The mate (Roberts) is a better seaman than witness, and did not suggest a way of saving the vessel, in fact nobody suggested a way to save her. The ship was abandoned off Florida—50 miles from the coast.

Mr. Kerr—Did you, as stated in the protest, see the vessel settle over and go down head-first when two miles distant? A. I did not see her go down, but saw her list. If I swore she went down head-first that was false. He further said that they landed on the following day about 30 miles north of Cape Canaveral and proceeded through Titusville and Jacksonville to New York. The log book was in the mate's trunk, which was not lost when coming ashore at Florida. The mate's boat

was upset in the surf. His boat was distant about half a mile. Witness was getting his boat ready to render assistance to the mate, who afterwards said he came near being drowned in the under-tow. This was caused by his act on board the barque, which in half an hour afterwards might have been blown on the coast and smashed to atoms. He did not know of any harbor between Cape Canaveral and Jacksonville. From where the vessel was abandoned to Jacksonville was, he thought, about 300 miles, though he did not know that Brunswick would have been about 180 miles, or at what distance Savannah was. At the time of abandoning the vessel she was about 200 miles from Cardenas. If she was under fore and topgallant sails the leak would have increased faster. When abandoned entirely the water was one foot over the main deck, and outside the water was level with the main deck and within about three feet of the hurricane deck. [A model of a full-rigged vessel, claimed to be a pattern of the destroyed vessel, introduced, upon which the witness illustrated his evidence to the court.] With that much water in her she would have sunk in about one hour. The distance from the main to the hurricane deck was about four feet. The hurricane deck hold was full of casks. Returning to the examination under protest, witness said Roberts, the mate, subscribed his name to the same statements in the protest that he did.

Mr. Kerr—Have you not had written and printed statements in jail concerning your evidence, the contents of which you have been committing to memory? A. I had papers, but no instructions to commit evidence to memory. Mr. Cleveland gave him no printed book of evidence to read. The counsel then went into the Naval Court proceedings. Witness re-shipped in the Brothers' Pride, at Cardiff, as second mate and boatswain. He never served in a man-of-war. As boatswain, you were probably "bossin" said Mr. Kerr. Witness replied he was "boss" of his watch. He could not describe the duties of a boatswain on board a barque. With the coal cargo she did settle to the Plimsoll mark. He remembered saying before the Consul at New York that they had a fresh breeze on the night of the 5th, but on Tuesday morning that it was blowing quite heavy from the N. E., he did not remember saying

Mr. Kerr—Now none of your telegraphing to the other side, witness, just look at me.

Witness turning his eyes to another point of the compass said, he did not think the wind, on Tuesday morning, was any higher than when they left. There was an ordinary breeze Tuesday a. m. from the N. E. At this time the vessel was making about six knots, and had top-gallant sails set. He never sailed in the Basin of Minas, Bay of Funday.

Mr. Kerr—Humph! I don't know where you have been at sea then.

Mr. Thomson objected to prisoner's counsel sneering at the witness.

Mr. Kerr in stentorian tones denied that he had sneered. His Honor decided that Mr. Kerr had sneered and begged Mr. Kerr to continue without making comments. Witness believed he had said before the Consul that he sounded the pumps on Tuesday; that there was a heavy sea running; that on Tuesday night she was making about three inches; that at twelve o'clock, midnight, the men were tired pumping and wanted the boats out. The men talked of danger and wanted the boats out to save



their lives, as the conclusion was that the vessel would sink. At the Consul's inquiry he may have stated that the vessel had six feet of water in the hold at twelve o'clock Tuesday night, and he may have stated that he left the vessel about six a. m. in the captain's boat. If he did this was true. He may have stated that at the time of quitting the vessel he had on a new suit of clothes. If he said so it was untrue. He said before the Consul that the captain took a chronometer, compass, and his own coat, but if he said the crew took nothing but what they had on their backs it was untrue. Witness did not know whether Captains Young or Hadderwick were at the Naval Court, but the Consul General, Mr. Archibald, was there.

Mr. Kerr—Well, then, you do not remember only nine months ago what you said before the Consul? Then, how is it that you so glibly related the testimony in your direct evidence? A. That was done.

Mr. Kerr—What do you mean—cooked up?

Mr. Thomson objected to Mr. Kerr's words, "cooked up," and His Honor confirmed the objection and again requested the counsel to make no comments. Witness continued: It thundered and lightened the night they left and he believed he said so to the Consul. He could not say he swore before the consul that he couldn't tell the cause of the vessel leaking. If he stated such to be the case it was a falsehood, a lie "and a perjury," added Mr. Kerr.

Over this latter quotation Mr. Thomson and Mr. Kerr had a small feud. Proceeding, witness said, just before abandoning the vessel, she was sailing about six knots per hour "and running around like a hen with her head cut off" soliloquized Mr. Kerr. Witness said they clewed the sails before quitting her and she then went round and round. The witness was further questioned on the evidence he gave at the Naval Court, and partially affirmed and partially contradicted his testimony before that inquiry. He might have stated before the Naval Court that there was no use endeavoring to make port at twelve midnight, Tuesday night. If he had said it came on foggy at ten o'clock, after they quit the vessel, that statement was false. After dinner Mr. D. S. Kerr continued to subject Thomas to a rigid cross-examination on his evidence regarding the scuttling of the Brothers' Pride. Witness did not recollect whether it was clear weather when they abandoned the barque. If he said before the Consul that she sank before they were out of sight of her that was not true, because he did not see her sink. He may have said before the Consul that she "chucked" herself. She did list over probably ten minutes after leaving her. He did not see her go down, and supposed she had sunk as he stated she had before the Consul. He may have said at the Consul's inquiry that he actually saw her go over as if sinking, but did not recollect saying that he saw her go over. If he swore to this it was false. He saw her go out of sight. He may have stated that the vessel was full, or nearly full, of water when he last saw her. If he did say so it was true; it was also true if he said he heard the water swashing about in the hold. He might have stated that the water was almost on a line with the decks when leaving her. If he did, it was true; and if he said they got into the boats about 'midships, or that he saw her go over, that was also true. His statement before the Consul General was, he thought,

signed and confirmed in the presence of the Consul, Mr. Archibald. At the close of this testimony he did not remember being sworn. The Captain and mate went in to give evidence before witness, but who followed him witness could not state. [The information taken at the Police Office was produced, and witness identified his signature. The information was made on the 2nd of February, 1880.] Here Mr. Kerr quoted from the information. The word deponent in the information, His Honor stated, was irregular, and hoped such depositions would not be taken at our Police Court again. It was a chance if the witness, on most occasions, understood the meaning of the word deponent. He hoped the officers of the law would note this irregularity.

Witness continued: On the night of the 17th of December he saw Captain Brown with Roberts at the Park Hotel. At this time witness was out of employment. Mr. Cowie (in Vroom & Arnold's) introduced witness to Mr. Brown. Witness was offered payment for his time, and expenses to go to New York. On the 18th he went with Brown and the mate in the American boat to Boston for New York, where he saw Mr. Cleveland. For this scuttling offence there was an indictment made against him, witness, and for this offence, you expect to remain in jail all your life, do you not? queried Mr. Kerr. This brought Mr. Thomson to his feet and he objected to that mode of cross-examination. You were indicted at this court on an information made against yourself? asked Mr. Kerr, addressing the witness, who replied that he supposed he had been. He did not say to any person since the Grand Jury's bill was found, that if he did not succeed in convicting Tower at this court he would at the next court.

Mr. Kerr—Do you expect to be tried for this offence in which you have criminated yourself?

Objected to by Mr. Thomson.

Mr. Kerr—Is it not your hope and conviction that if Tower is convicted you will get clear? A. My hope is to get clear as soon as they will let me. He had asked Mr. Cleveland when he would get clear.

Mr. Kerr—Mr. Cleveland has told you when you would get clear, has he not? A. No, he has not.

Mr. Kerr—Did you ask Mr. Alward when you would obtain your liberty? A. Mr. Alward said to me "to keep up a good heart." Mr. Alward acted for me at the Police Court, and I had several whisperings with that gentleman there. He has acted as counsel for me since. I had consultations at the Hotel Dufferin with Cleveland and Alward. I was arrested on the 3rd February, 1880, and incarcerated in jail.

Mr. Kerr—When do you expect to get discharged from jail? A. I cannot say. Continuing he said he had heard of stowing bilge and guntling fashion, but he did not go down in the hold to see how the cargo was stowed. Mr. Kerr then offered a plan of a section of the vessel.

Mr. Thomson objected to its being placed in the witness' hands.

The court ruled in Mr. Kerr's favor, and the witness was examined by the plan in reference to the stowage of the cargo. That two casks lay in the hold athwart-ships he knew, because he crawled over them to bore holes in her. Could not point out the place where he bored the



holes on the plan, because it did not, in his mind, resemble the vessel. [Addressing Mr. C. A. Palmer, Mr. Kerr was informed that Mr. D. J. McLaughlin, Jr., drew the plan. Mr. Kerr claimed that the plan should be permitted, also that the witness was evading the truth. The court could not see it in this light and the plan drawn by the prisoner and a full-rigged model of the barque were substituted for Mr. McLaughlin's plan.] On the model the witness pointed out the position of the lazarette hatch, or "booby hatch." The air streak continued all round the vessel. There were air streaks under the one he bored through, abreast of the mizzen mast. He could not swear there were any abaft the mizzen mast. The casks he stood between to bore the holes were lying fore and aft. He did not notice anything holding these casks in position. There were no other casks on top of these and he noticed none beneath them. The casks stood about two feet apart. The captain could have bored the holes if he chose. Witness had never known Captain Tower to act insane, and there was nothing to prevent him boring the holes himself. He looks like a man who could bore a pretty big hole with an augur. He had never known Captain Tower to act like a madman or a fool.

A jurymen—How far would these holes be below the water-line of the ship? A. Just above the copper-sheathing, which came up to the light-water line. The holes would be about two feet below the load-water line. The light-water line was seven or nine feet, he could not say which. The load-water line was 14 feet. The air spaces were open and he soon bored through to the skin of the vessel and out into the sea. The stream of water struck witness amidships, and the water stopped when the vessel rose on the starboard tack, the holes coming up from under the water as the vessel rolled. The holes were out of water several times; he saw them out when he left the vessel. These were the holes in the stern, not in the bow. He bored the holes close to each other, and perhaps 4 feet below the load-line.

An attempt was then made to prove what melado is like, and the tins produced by the prosecution, were exhibited. Mr. Kerr tasted the contents and declared most emphatically that the article in the tins was not melado, it was more like loaf sugar. The witness, however, could not swear that what the tins contained was or was not melado. A bottle of dark, thick fluid substance was then exhibited to the witness, who said the sample was not like the melado that composed the cargo. He saw one cask of the cargo broken on deck and in the material which run out of the cask he washed his clothes. The fluid ran out of the scuppers slowly. He was in his barefeet and trod on the clothes in the fluid as it lay along the rail. He always understood that bilge water was good to wash clothes in. There was a broken cask returned to shore under the mate's orders. Mr. Kerr then said he wanted to have a little touch at the morals of the witness.

Mr. Kerr—If the captain ordered you to murder a man would you do it? A. No I would not.

Mr. Kerr—What is the difference between murdering a man and murdering a ship? Witness did not answer.

Mr. Kerr—I suppose you would steal if the captain ordered you to. You know that you have lied, lied, lied? A. No, sir, I would not.

Mr. Kerr—Did you not know you were doing wrong in boring these holes? A. No, sir, I did not at the time. Witness continued: It was not customary to treenail holes between timbers. The captain gave him a plug to put in one hole, and he found no difficulty in putting it in; the plug was about six or eight inches long. Four or five hours after first leaving the vessel he returned with the steward and fired the vessel. He first left her about six a. m., and before twelve a. m. he and the steward had fired her. At this point the counsel claimed that the witness was in the act of telegraphing across to the other counsel. Mr. Kerr said he had had intimations of the fact from several gentlemen about the court.

Mr. Thomson asked for an explanation of Mr. Kerr's insinuation. Mr. Pugsley and Mr. Alward denied having any communication with the witness. Mr. Cleveland also denied signalling with the witness, and turned his head another way. The witness then resumed. The vessel, he supposed, was hopelessly gone when she was set on fire, but before that they could have saved her. The court then adjourned until morning, when the counsel for the prisoner continued the cross-examination of Thomas. After leaving the vessel the first time he returned to her was about eight a. m. He did not then sound the pumps, but did so at twelve o'clock, noon, and found about twelve feet of water in the hold. This was the time he set fire to her. The accomplice recited again how the firing of the vessel was effected; how he made chips, poured oil over the cabin, forward cabin and forecastle. The fire went nice. He knew an individual named Andrew Johnson, and may have had a conversation with him in Captain Tower's woodshed, and may have stated to him a different version of the loss of the vessel to what he had related before this court. He may have stated to Johnson that the Brothers' Pride was old and rotten and leaky, and that they were always pumping her, and may have stated to Johnson that there was a gale of wind before she was abandoned. Andrew Johnson may have asked him why the vessel was not run closer to the shore. He might have stated to Johnson that the barque was waterlogged, and that the mate's boat was upset. The vessel made considerable water on her way from Cardiff. She grounded before reaching the cays, when sailing from Cardenas, and remained grounded about three hours in the middle of the day. At this time she was substantially loaded. The vessel was in port at Cardenas about three weeks, and exposed to a hot sun. He had no conversation in July last that he recollected, with a man named James C. Johnson, on Magee's wharf, St. John. He was on this wharf with a man named Cardy Johnson. He could not recollect talking to this man about the Brothers' Pride. This closed the cross-examination and Mr. Thomson opened the re-examination and offered as evidence some correspondence between Mr. Cleveland and witness, in order to show that there was no secret intimacy between the witness and Mr. Cleveland, and to repel insinuations made by Mr. Kerr concerning Mr. Cleveland. Mr. Kerr objected on the ground that it was impossible for his case to know that the letters produced were all that were written. In reference to the letters witness replied to Mr. Kerr that he had these letters in his pocket during his cross-examination. He had also three other letters in jail. These letters witness fetched from jail and produced them in court. He produced two



received before his indictment and one after. The indictment was on the 14th March. Mr. Thomson resumed the examination. He (Mr. Thomson) would put them in as evidence without knowing their contents. Mr. Kerr objected to the letters being submitted as evidence. The objection was overruled, however; and the first letter was read:—

New York, February 18th, 1880.

*Mr. H. C. Thomas:—*

Dear Sir:—I know that Captain Tower and his party will do all they can to annoy you and depress you and try to make you retract what you have said and frighten you. All you have to do is to have nothing to do with them, talk with no one in the jail for you will be sure to have it falsified. Tower knows that he is in a very bad place and will do all he can to get out of it, and will not let such things as lying stand in his way. Meantime you do as Mr. Alward says, he is a person on whom you can rely. I shall be at St. John before long.

Yours truly,

T. CLEVELAND.

The second letter was as below:—

New York, March 5th, 1880.

*Mr. Howard C. Thomas:—*

Dear Sir:—I received your letter of the 2nd March to-day. Do not despond for I think we shall entirely be able to bring Captain Tower to justice. It is the policy of all such people to endeavor to brow beat or discourage the witnesses against them. You have only to remain firm in the truth and I have no doubt that the truth will prevail.

Yours truly,

TREADWELL CLEVELAND.

Evident the policy and purpose of Captain Tower and his counsel is to make you despondent; to talk of penitentiary, etc. for you, freedom for him. We have but begun and all this talk is bluster. I believe in the supremacy of truth, and I thoroughly believe that you have told the truth. Do not be worried by what they say on purpose to annoy.

The third letter was read as follows:—

BANGOR, March 16th, 1880.

*H. C. Thomas:—*

Dear Sir:—The trial is fixed for the 29th March; so you will not have much longer to wait. I want you to begin and draw a careful plan of the cabin.

T. C. CLEVELAND.

Three other letters were then read as evidence, and Mr. Kerr argued that they should not be admitted as evidence. He strenuously objected, and asked what right Mr. Cleveland had to write to a Crown witness in jail. The letters are patent to every man in court and have a power and influence that is very visible. Mr. Kerr intimated that the jury had been discharge and that it was the intention of the Attorney General not to try Thomas. Mr. Pugsley answered Mr. Kerr, and said he had no orders to say that Thomas would not be tried. Mr. Kerr claimed that the Attorney General was neglecting his duty. His Honor said that he had discharged the jury and was accountable for that act. At all events Thomas could not be tried at this sitting. After an exhaustive harangue about the admissability of the second lot of letters, the Judge decided they were admissable, though he would subject the evidence to Mr. Kerr's objection. These letters were read as follows:—

New York, March 19, 1880.

*Mr. Howard C. Thomas:—*

Dear Sir:—I have written again to those Digby people and asked them to write to you, which I hope they will do. I have sent to Mr. Alward a number of questions which I wish him to ask you particularly.

You will be careful not to let that man in the cell with you see any of your papers. Be doubly careful these few days before the trial.

Yours truly,

TREADWELL CLEVELAND.

Are you drawing an accurate and careful plan of the cabin?

MARCH 28, 1880.

*H. C. Thomas:—*

Dear Sir:—I came to jail to-night but found that I could not see you. It is now impossible for me to see you till Monday. I will see you on Monday.

You must know that it is the object of those persons to annoy you and to give me all the trouble they can, their only hope being through such plans. Be strong, be patient and the truth will conquer.

Yours,

T. CLEVELAND.

HOTEL DUFFERIN, St. John, N. B., March 29, 1880.

Dear Sir:—I find that for some reasons or others not yet ascertained, it would make too much fuss for me to apply to see you yet. Our adversaries have only one hope, the pitiful one of trying to make the jury believe that this is a plan concocted by you, or by me, or by some one, and in that view of it, I am just as well satisfied that I do not see you. You have only to recollect what I have so often told you, speak the truth boldly.

You have your rights on the witness stand, and you will have the sympathy of all right-feeling men, if they see that you are now telling the truth without fear or favor. There are a number of new matters that I have named, that I would like to ask you about, in order that the questions could be put to you by Mr. Thomson more concisely.

But it will be all right in the end. If you know about them you will, of course, speak fully. Your cousin is here, and he will corroborate you, that you told him all about the scuttling long before I ever saw you. I rather think that this evidence will destroy Captain Tower's proposed plan to shew that this was a matter of spite in you, or a matter of conspiracy between you and any one.

I know you are in a trying position, but all you have to do is to be patient, and firm in the truth.

Yours truly,

T. CLEVELAND.

Some further conversation took place about the letters, during which Mr. Kerr said that when Mr. Thomson arose a very wide door was opened to him.

His Honor—I did not think you would make that charge against me Mr. Kerr.

Mr. Kerr—I have made no charge against you, Your Honor. You are one of the very best judges on the bench, and we are proud of you. I am a British subject, and as such, stand here for my client, and will plead for him if the blood was running from my veins. I am sincere in my case. Mr. Thomson then continued his re-examination. Witness had never directly nor indirectly had any offer from Mr. Cleveland to give evidence in this case. Witness and Captain Brown had conversation about the vessel, at the Park Hotel. Witness proceeded to New York on the 18th December, at the request he supposed of Mr. Cleveland. Mr. Vroom paid his passage to New York.



Mr. Thomson—Coolly, then you knew that you were going to New York to make a clean breast of this thing?

Mr. Kerr—Indifferently, now, now, “clean breast” and the court ruled the question out. When he arrived at New York he with Roberts and the captain went to the Eastern Hotel. It was at Captain Tower’s request that he went before Mr. Hughes, the notary, but did not remember making a sworn statement to or in presence of that gentleman. The captain told him that he would have to be examined before the Naval Court before being paid off. The witnesses were examined before the Naval Court separately. There was a paper read over to him at the examination before Mr. Hughes. Mr. Kerr had questioned him (witness) about what he stated at the Naval Court.

Mr. Thomson—What induced you to state that the evidence you gave at the Naval Court was untrue?

Mr. Kerr objected in a lengthy speech.

Mr. Thomson asked the court to keep Mr. Kerr within bounds.

Mr. Kerr—If Mr. Thomson thinks his witness is clean he makes a mistake. The judges of the court should uphold the sacredness of an oath.

Mr. Thomson said the witness had a right to say why he had made this statement. It was a part of the case for the Crown. That Captain Tower had ordered the scuttling of the vessel, and that he attempted to cover it up afterwards should be shown up from beginning to end. The prisoner has been, it appears, equally guilty of perjury and scuttling the vessel. The insurance companies had paid these witnesses for their time, and it was clearly fair and right that they should.

Mr. Kerr asked again to be heard about the dreadfulness of Mr. Thomson’s statements. Mr. Thomson wants to take away what little character and liberty his client has through the insurance companies and through that dreadful thing there, pointing to the witness in the box. His Honor rebuked Mr. Kerr for such observations. Mr. Kerr continued and said he trembled, felt shocked and distressed. There was little justice here. His client’s mouth was closed. There is one thing that man is endowed with, it is a great safety valve, and that is shame. The witness has acknowledged that he lied, lied, lied, said Mr. Kerr, and shame should be his master. The witness confesses having committed an enormous crime, and says he not only murdered the vessel but ran the risk of murdering the crew.

Mr. Thomson’s question what had induced the witness to state at the Naval Court what was untrue was admitted subject to Mr. Kerr’s objection. Witness signed the protest to keep the captain out of trouble. The captain told him he would have to go before the Naval Court, and before entering the court the captain said to say she was leaking, she went down quick, and that it was blowing. He then followed the captain’s direction’s and went before the Naval Court. He made the statements before the Consul merely to clear the captain. It was two or three days after the inquiry that he left New York. The vessel touched her nose in the soft sand at Cienfuegos and ran on the flats at Cardenas. These groundings did her no apparent harm.

The court then adjourned and after dinner Mr. Thomson continued his

re-examination of Thomas. There was no water on the cabin floor when he poured oil over it. If there was twelve feet of water in the hold that would bring the water over the cabin floor. He sung out when leaving the vessel after setting fire to her that there was twelve feet of water in the hold, but as it did not overflow the cabin floor there was not probably that quantity in the hold. He could not say that the melado cargo was more buoyant than the coal cargo. A barrel full of water will float. The air streak, between the two timbers, was about two feet wide. He bored the four holes together because there was not room to bore them apart. He left the auger after boring between two casks. He left it there each time he had bored. After the material ran out of the cask there was no deposit. He washed his clothes in the liquid that ran out of the casks, having heard that molasses water was good for clothes. Mr. Cleveland is not the first person to whom he told the present version. Witness then proceeded to say that he told it previously to a friend in Nova Scotia, but the words were not taken, Mr. Kerr objecting. The stevedore at Cardenas told witness that he understood the vessel would not get further than the Bahama banks. The conversation between him and the stevedore occurred when they were ashore, how it came about he could not recollect. He made no reply. There were not any other suspicions expressed by anybody. The holes were a little abaft the mizzenmast. When he saw the holes he was standing and holding on to a brace so that he could see the holes as she rose on the waves. He heard orders given the stevedores by the captain not to stow the cargo hard against the bow ports. This concluded the testimony of the witness.

GEO. R. McNEIL was sworn. He said he resided in Barton, N. S., and was a general store keeper. He knew the witness, Howard C. Thomas, who is a cousin of his. He was at witnesses' house from the 1st June until the 15th of July, 1874. Thomas received letters at that time, witness having the privilege of reading them. Mr. Kerr objected to this evidence as irrelevant. The witness continued, however. Thomas came to his house at different times during the above mentioned period. The first letter that Thomas received from Captain Tower he did not get from the post office, he got the second one and gave it to Thomas. This was about the 15th or 20th June, 1879. The first one witness read on the 1st July. He could not exactly recollect what was in the first letter.

To Mr. Kerr—Thomas' home was distant from his about one mile. He read the first letter probably more than once. The letter concerned him because he had been loaning Thomas some money. He was not subpoenaed. He came, Mr. Cleveland promising to pay his expenses. The Crown officer never requested him to come. This advent to St. John was solely at the request of Mr. Cleveland, who only agreed to pay his expenses. He could relate distinctly what the letter contained. Witness then continued his direct evidence. He was interested in the letter because he thought Captain Tower had sent Thomas money and he wanted some of it. The letter of June 1st said that Tower expected to receive money soon and that he would forward some to Thomas. The second letter, as far as he remembered, spoke of Captain Tower being at Mr. Palmer's office, and that Mr. Palmer had not received his insurance yet, and that the vessel he was building in consequence was not getting along



very fast. Tower also said the times were very hard in St. John and advised Thomas if he could get a job in Digby he had better get it. He also said something about Thomas going to sea with him. He had heard of the barque Brothers' Pride.

Mr. Pugsley—Did Thomas at any time before December, and if so, when did he tell you that he had scuttled the Brothers' Pride?

Mr. Kerr objected. Mr. Pugsley withdrew the question. The witness had in his possession Mr. Cleveland's letter requesting him to come. The letter was produced and read. This completed the evidence of Mr. McNeil, who, after some debate as to the propriety of his seeing the accomplice, Thomas, in jail, was given permission to have an interview with Thomas in presence of the Deputy Sheriff. The court then adjourned until Monday morning. When it opened at sharp ten o'clock and after preliminaries the mate of the alleged scuttled vessel.

TRACEY C. ROBERTS was called and sworn and examined by Mr. Alward. He stated that he is thirty-four years of age, was born in Liverpool, N. S., and has followed the sea for sixteen years. He recognized the prisoner and had been on board the barque Brothers' Pride, shipped in her in October, 1878, at Bathurst, N. B. Had a deal cargo from Bathurst and sailed from there to Penarth Roads for orders, and from there to Abermouth Docks to discharge. Thence to Cardiff where took in a load of coal, five hundred and seventeen tons, for Cienfuegos and sailed about 1st or 2nd January. He first joined the vessel at Bathurst and reshipped at Cardiff as first mate; Howard C. Thomas being second mate and boatswain and Geo. Hall steward. The vessel drew fourteen feet with coal cargo and was down close to the plimsoll mark—within an inch of the mark. They were two months in going from Cardiff to Cienfuegos. The first part of the voyage was rough. They struck the trade winds in about twenty-four days and from that time had fine weather, reaching Cuba about 1st March. On the way out the captain and Thomas appeared to be intimate and on pleasant terms—more generally intimate than a captain and second mate should be. Witness dined in the cabin with the captain and Thomas. The cargo was discharged at Cienfuegos, where they lay for fifteen days, and during this time the captain said he was going to Cardenas. The captain went away and was gone a couple of days and intimated previous to his departure that he was going away for a few days. There were about twenty vessels loading at Cienfuegos at that time. The vessel touched her bow on being hauled into the wharf at Cienfuegos; he could not say she received any damage. She did not leak at Cienfuegos. Here they took on board sixty tons stone ballast and dunnage wood, some of it soft cordwood and more of it boards. From Cienfuegos they went to Cardenas; this voyage occupied about fifteen days. On the voyage experienced fine weather and a moderate breeze. The vessel did not leak on this voyage, though she came nigh getting on a reef which was encountered after rounding the Cape—how far from the Cape he could not say. When the cry of breakers ahead was raised he was in his berth. Where the captain was he could not say, of his own knowledge. He went on deck and heard the captain's voice, and saw the steward, but who else he could not recollect. When he went on deck the vessel was moving round. On what tack she was he was not certain.

When he saw the reef it was astern the vessel ; it was a clear night and the reef was fifty or sixty feet long. He could see the breakers over it. He thought she was on the port tack from a brace which he remembered letting go so that she would wear about. He saw a chest in the possession of the steward at Cardenas. This chest he saw in the captain's room before. He saw a coat and ulster in the possession of the steward. He did not go ashore from the vessel which lay at anchor within three miles of the wharves at Cardenas or the town proper. He was not ashore at any time. About thirty tons of the ballast was discharged at Cardenas. The Brothers' Pride had an air-streak around each side, about two and a half feet from the lower deck beams. There was another air-streak about six feet below. This streak was about three feet from the keelson and extended about six or eight feet abreast the mizzenmast. It ran aft the mizzenmast. The upper streak was three feet from the deck. The cargo at Cardenas was taken on board in lighters. They laid there about three weeks. From the lighters into the vessel the cargo was raised by means of a purchase gaff, tattle rigged from the cargo gaff and dropped with hooks to the lighter and the casks raised by their chimes into the vessel. The casks were deposited into the hold, but if they came too fast some were rolled on deck. Witness then explained how the casks were lowered to the deck. A piece of deal was placed under the wheel of the winch on top of another piece of deal. When lowering, the upper piece of deal was levered against the wheel as the velocity of the cask required. There was a man who attended to this lever. He was a Russian and his name was Trisinski. The stevedores were people from the Island. He thought he could recognize one of them if he saw him. [One of the stevedores (Melien) was brought forward and witness recognized him.] Witness had seen this stevedore about three weeks. This man was present on board the vessel during the ten days they were loading. They would sometimes bring out sixty casks and sometimes seventy at a time in the lighters. A part of the cargo was taken on board about seven or eight miles from where the first part was taken on board. The casks in the hold were stowed fore and aft, commonly known as bilge and guntling fashion, and about four tiers from the bottom of the hold to the main deck. There were some between the main and hurricane decks—about one hundred and seventy odd casks. There were eight hundred and sixty-three casks on board the vessel when she sailed. The casks were medium material casks and had vent and bung holes. The bung hole is the largest. The vent holes were two to each cask and alongside the bung holes. The casks were neither new nor old, and of different shapes. The casks came up pretty light and when rolled on the deck had a swashy sound. One of them on going down the hold struck on the keelson and burst, the lever of the winch wheel in charge of the Russian having slipped. Both heads came out of the cask and he saw the contents run out. It was a material thinner than molasses and of a dark color, and had a bilge water smell. The material ran over the hold and the cask was returned to the deck and sent ashore. The melado in tins, the same as that shown to the accomplice, Thomas, was shown to witness. Mr. Kerr objected, and his objection was noted, and witness continuing said, the material out of the cask that burst was not like the crystalized material in the tin. It



did not smell like it. (The seven specimens witness examined and placed them to his nostrils.) No. seven specimen, in a bottle, witness said approached in color nearest the contents of the cask, but was in substance thicker and did not smell like the cask material. Some of the casks would leak more than others when taken on board. The leaks were about the heads. About twenty or thirty leaked in this way, as far as he saw. He has never seen a substance that he knew was melado. One cask exploded on deck and close to where he was standing at the time. It was up-ended before the contents ran out. The material that ran out of the cask was about the same as that which was spilled in the hold. The inside of the head of the cask was clean; there was nothing attached to, nor deposited on it. He did not see Thomas wash his clothes in the article that ran on deck. The up-ended cask remained on deck for several days. The stevedores would sometimes damage the casks in prying them around. The captain was sometimes ashore and sometimes aboard when the casks were being transferred on board. Witness saw him in the hold of the vessel, giving directions about removing a cask, and having it stowed differently, to better advantage. The captain was in the hold generally once each day, and talked about getting as much cargo in as possible. The vessel was stowed well up forward on the ground tier, in the usual way vessels are stowed. There was a space left on the top tier. There were four tiers. The fourth was about five feet from the bow ports. The second and third tiers went as far forward as they could conveniently go. The T. C. Jones was lying near the Brothers' Pride. She hailed from Liverpool, N. S., and was bound to New York, he understood. He saw Thomas start one night from the Brothers' Pride for the T. C. Jones.

Mr. Kerr objected to this evidence and the court consented to reserve the point for Mr. Kerr. Witness saw Thomas leave for the T. C. Jones a couple of nights before the Brothers' Pride sailed. They left Cardenas on Monday. It was about 8 o'clock at night that Thomas went from the vessel to the T. C. Jones, having in his possession a trunk which he placed in a boat along side the Brothers' Pride. There was another man in the boat. Witness had seen the trunk since then on board the Yarmouth boat when on his way from Boston to St. John. He could not remember the name of the man in the boat with Thomas. The trunk was in Thomas' possession on the Yarmouth boat. This was in the month of May. The vessel just after leaving Cardenas for outside the Cays touched on her bottom. The rise and fall of tide at Cardenas is between 3 and 4 ft., and the vessel laid grounded three or four hours. When the tide rose the vessel floated off. There was no sea and the vessel laid easy. The Cays are, witness said, small reefs of coral. The plimsoll mark on the Brothers' Pride was pretty well defaced. The vessel drew about the same amount of water she did with the coal cargo in, about 14 ft. They sailed on a Monday morning a 5 o'clock. The captain started to go ashore on Friday afternoon and returned to the vessel on Sunday night with Thomas. They were away Friday night until Sunday night at 12 o'clock. He had the vessel pumped on Saturday afternoon and found the water that came out of her was of a dark material, similar to that which flowed from the broken casks. The wind on Monday, at the

time of sailing, was S. E. and during the day they made about six knots an hour. The wind at 10 o'clock that morning hauled E. N. E. and blew fine and fresh, and continued all day a whole sail breeze. They were then on the starboard tack, the wind continuing in the same quarter, E. N. E. and continued on this tack until they abandoned the vessel. She was under full sail all day Monday; they lost sight of the land about nine a. m. on Monday. There were two pumps on board; they commenced to pump on Monday, a. m. His watch pumped between 8 and 12 that p. m. From 4 to 8 Tuesday, a. m., his watch and himself were pumping steadily, and at the latter hour the pumps sucked, there being no more water in her. On Tuesday, a. m., the wind, he thought, was N. E., and the weather the same as on Monday, clear and fine, the breeze whole sail and a little chopping sea. He made no soundings of the pumps during this time. Tuesday forenoon was his watch below. He again came on deck Tuesday noon and found the wind E. N. E., and the weather unchanged, and all sails set; could see the sun. He remained on deck until 4 p. m., and off and on until she was abandoned. When he came on deck Tuesday, noon, he saw the second mate, Thomas, who was at the pumps. There was only one pump, the other was broken, he having found it broken when he came on deck Tuesday, and others with Thomas were at the pumps when he came on deck. He sounded her on Tuesday at 4 p. m., with a piece of marling line attached to a bolt. Marling line is a piece of seasoned stuff of hemp material. After sounding her he found eighteen inches in her. The water that came out of her then was clear. At the close of his watch all hands came on deck and remained on deck until she was abandoned Wednesday, a. m., about 6 o'clock. From 4 o'clock p. m., Tuesday, until 6 o'clock the following a. m., the weather was fine, the sea the same, a slight swell, the vessel lying natural. He had been in the Gulf Stream before several times. In the month of May the weather is generally fine in the Gulf. Tuesday night and Wednesday morning the pumps were going continually; Thomas frequently sounding them. Witness sounded them at midnight and found four feet of water in the hold. After this the men were frightened and seemed to think they were going down in her, and asked to have the boats put out. On Tuesday p. m., he examined the bow ports to see if he could find the leak. He went below the main deck and remained there three or four minutes finding no leak, but the smell musty and disagreeable. He examined no other part of the vessel for the purpose of finding the leak. At 3 a. m. Wednesday the boats were put out, the wind having somewhat subsided. He knocked the men off the pumps and got the boats out, and, after doing this, the boats lying astern, all hands went again to the pumps. He could not say how much water there was in the hold at the time of the abandonment—6 a. m. Witness had four men in his boat and the captain had four. Thomas and Hall went in the captain's boat. He had also in his boat a trunk which contained his things and the ship's log book; also some provisions. The captain's boat was quite full. After getting in the boats they rowed around her. She had then her top gallant and royal sails clewed up and topsails set. The water then outside was about a foot below the hurricane deck. They remained in the vicinity of the vessel until about ten a. m., the vessel



sailing in any and every direction. At this hour Thomas, Hall, and another, he thought, boarded her, witness and his men keeping their boat. He did not hear Hall and Thomas receive any orders when they went on board. He saw them go forward and return aft. They remained on board about fifteen minutes and quit her, again going on board about eleven a. m. They went aft, down the lazarette and thence to the cabin; thence to the forecastle. At this time fire was issuing from the cabin and lazarette. The court adjourned for dinner.

In the afternoon spectators crowded the court room to hear the continuation of the trial of Captain Tower. The mate of the Brothers' Pride again took the stand, and went on with his evidence. Mr. Alward conducted the examination of the witness, who, resuming his testimony, said he saw the fire on the vessel first coming from the lazarette, aft, which was situated abaft the after house, and on the left of the hurricane deck. It was a place inside, about four feet high and seven feet from the after partition of the cabin to the stern post. He did not notice how the cargo was stowed in the stern. The w. c. was on the port side of the cabin, near bulk head and the lazarette hatch on the opposite side. The fire burnt upwards pretty well aft, then it commenced forward, and ran up the rigging, sails and topsails. The crew remained about in the boats an hour or so after she was fired. Witness noticed holes on the starboard bow and water coming out of them. He noticed these holes after Hall and Thomas went on board, and about five minutes before she was set on fire. He could not say how many holes there were. He put up no signals of distress. He did not lighten the cargo before abandoning her. There were some casks on the hurricane deck, about fifteen, which were stowed fast with planks. These were not rolled off. It was about thirty minutes from the time the men said they were tired until the captain ordered the boats out. The boats were in a good state and were repaired at Cardiff. They finally rowed away from the vessel about two p. m., and lost sight of her about an hour later. There was quite a swell on and she was considerably listed. They then put off for the coast of Florida. Wednesday night was rainy and squally, and sometimes the boats would tow along together. They reached the coast of Florida about five o'clock Thursday p. m., and landed at about thirty miles north of Cape Canaveral. His boat was upset when near the shore, and it was some minutes before they rescued themselves. The other boat came ashore afterwards all right, and both were hauled up and made tents of for the night. He saved his trunk and the log book, which got damaged a little. The book was afterwards taken to New York. Next morning they looked about for signs of habitation and soon proceeded to Titusville, a distance of fifty miles, proceeding down the St. John River. They afterwards proceeded to Jacksonville, thence to New York and thence to St. John, arriving here in June. He then proceeded to Digby and returned to St. John in September, when he sailed from St. John to Ireland in the R. W. Wood. He returned to St. John some time in the following December, about the eighth or ninth. He then saw Captain Tower several times, on the street, in his own house and at the St. John Hotel. They spoke of different things. At the hotel he told the captain he had received a letter from Mr. Cleveland while in Ireland, which requested him to pro-

ceed to New York. The captain asked witness if he wanted to get him into trouble? The captain said Mr. Palmer wanted to see witness at his office. Later, he saw Mr. Chas. Palmer who wanted him to sign some paper and asked him how long he would remain in the city. Mr. Palmer wanted to know of witness how many casks of melado were in the vessel. Witness saw Captain Tower after this in Thomas' company. They, the three, went out of the St. John Hotel and had a drink, and next morning witness proceeded to New York. He saw Mr. Cleveland there and had several conversations with that gentleman. He went before a notary in New York in the month of May and signed a document. This document he had not seen previous to attaching his name to it. He did not remember the document being read over to him, nor of being sworn. Three or four of the crew could not speak English. They were in Mr. Hughes, the notary's office, about fifteen minutes, and previous to appearing before Mr. Hughes, Captain Tower asked witness if the others of the crew would sign without any trouble. The Russian, Trisinski, did not come to sign it and gave, as far as he knew, no reason for refusing. Witness was before the British Consul and was examined by him. The captain went before the Consul first, witness next and Thomas afterwards. Before appearing before the consul the captain told witness that he would have to make out that there was very heavy weather and that the vessel was not carrying too much sail. It was in the hall the captain said this and Thomas, he thought, was present. All hands were talking about it. The log book at this time was in witness' trunk in New York. The captain was aware that the log book was in his trunk. The captain said that witness would have to say that the log book was lost. They were paid off a day or two after the naval inquiry. He received \$5 previous to this on account of wages. Thomas and witness, after the naval inquiry, came to Nova Scotia. In New York the captain and Thomas boarded at the Eastern Hotel, witness stayed on board a vessel. They had no ballast with the cargo of coal, and took three or four boat loads of dunnage wood on board at Cienfuegos. The stone ballast was in large pieces. He left the log book and trunk at Lyon & Besnard's, 34 South Street, New York city. T. C. R. is marked on the trunk. On Tuesday, at noon, they could have returned to Key West, which was distant about one hundred and twenty miles, and on the south coast of Florida. When the vessel was abandoned they were about three hundred miles from Cardenas. The captain made no proposition to return and did not consult with him about trying to save the vessel. The night she was abandoned the captain said to witness it would not do to proceed too far before leaving her. This closed the mate's direct examination and Mr. Kerr commenced the cross-examination. Previously, however, witness telegraphed to New York for his trunk, it being the desire of the court to have the log book. Witness continued: He was friendly with Captain Tower. From the time he joined the vessel until he abandoned her, the captain and he were always on friendly terms. He was not jealous of the second mate, Thomas. Sometimes he was a little cool to the captain. He felt the same toward Captain Tower, when he saw Captain Brown, as he always had. He saw Captain Brown on the 17th December, and proceeded to New York the next day, and so did Thomas.



He received \$26 a month and his board, but has received no \$500. He has received from Mr. Cleveland \$50 a month since sometime in January, also his board. He has been boarding at the St. John Hotel, where he paid \$5 per week. His expenses were paid to New York. The first letter he received from Mr. Cleveland was in the first part of December. He saw Mr. Cleveland in New York frequently, and on no other business than that connected with the Brothers' Pride. He has received the sum of \$50 a month and his board from Mr. Cleveland since January. He has no promise, nor has he received any other sums from Mr. Cleveland. He and Thomas and Cleveland came to St. John from New York on the 28th January, and made an information at the City Police Court. [Information produced and identified by witness.] His suspicions about the cargo were aroused by the swashing of the contents of the casks. He received the cargo and gave receipts for each lighter load at each time signing for melado. He did not say that the captain knew whether he was receiving melado or not. Some of the casks would roll heavier than others. He could not say that the prisoner had any knowledge of melado. It was received at \$5.25 per cask, and eight hundred and sixty-three casks at that rate would be a good freight. He did not know of other vessels at Cardenas getting \$5.50 for sugar for North of Hatteras. He was never at Cardenas before and has no personal knowledge of melado. When at Cardenas the weather was fine and summer-like. He possesses a master's certificate which is in New York, and in the possession of E. M. Patchell, 43 Exchange Place. He received his certificate in 1867 in London, where he was examined and passed as master. He did not recollect saying he had the log book when the Police Court investigation was going on. He did tell them at the Naval Court that the log book went down with the vessel. On Wednesday morning the captain could do nothing more than leave her; he could not save her then. Had they attempted to return to Cardenas they would have encountered the Gulf Stream one way and the wind another way. They abandoned the vessel because she appeared to be in a sinking condition, and to all intents and purposes lost. The way she was making water at the time, it would have been impossible to have made Brunswick, a port forty miles from the place of abandonment. Even had they worked the pumps vigorously it would hardly have been probable to get the vessel to Brunswick, Savannah or Jacksonville. At the time they abandoned her, Jacksonville would have been about one hundred and seventy miles distant, Brunswick, Georgia, one hundred and forty miles. He gave evidence on oath at the Consul's inquiry. He thought he had been asked at the Naval Court whether he could have kept her afloat so as to reach Jacksonville or Savannah by working the pumps vigorously. He presumed he answered that he did not think he could. He probably said to the court that Jacksonville was one hundred and forty miles, Brunswick one hundred and eighty and Savannah two hundred miles from the place where the vessel was abandoned. He thought it was right to abandon the vessel when they did, though before the abandonment, he proposed no way of saving the vessel. He did not hear any person propose a way to save her. Havana was to the westward of their water-logged position and distant about three hundred miles; Cardenas to the eastward was

also about three hundred miles. He could not say the vessel received any injury by touching at Cardenas. A chart was then placed in witness' hand and the relative positions of the above mentioned towns calculated upon and pointed out. The strength of the Gulf Stream off Elliott Cape, witness said, is about two knots an hour. It is not four knots. According to the theory the stream runs faster with a N. E. than any other breeze, but to his personal observation it did not. He has been through the Gulf Stream about thirty times.

Mr. Kerr—Give me your notes that you have been taking here in court since the case opened.

Mr. Thomson objected to Mr. Kerr's imperative style of questioning the witness.

Mr. Kerr—Give me the notes that you were reading before you came into court; hand them out, hand them out now. A. I have no notes and took no notes.

Mr. Thomson—I have yet to learn by any rule of law that a witness has not a right to take notes if he wishes. To fly at the witness as Mr. Kerr has just done and say ha! ha! ha! fork out those notes; to snatch them from his pocket, as it were, is a scene that should be prohibited in court; Mr. Kerr's advances toward the witness are indecent to say the least.

Mr. Kerr—I feel for Mr. Thomson and his degradation. His bravado will not do and if Mr. Thomson takes such a high stand there will be trouble.

The Chief Justice could not see any impropriety in the witness taking notes. Nor your Honor, said Mr. Kerr, in my asking him if he did?

His Honor concurred with Mr. Kerr.

The book of protests was then put in witness' hands and he identified the several signatures of the crew attached to the protest made before the notary, Mr. Hughes. He could not recognize that gentleman who was in court. He went before Mr. Hughes for a particular purpose and to sign what was called a protest. He signed his name to this document but could not say that he swore to it, nor could he say that he saw the others of the crew swear to it. After a vessel is lost it is the duty of the captain and crew to make a protest. At the inquiry before the notary, he did not say the vessel sailed well equipped and provisioned from Cardenas to New York. He was never before in a castaway vessel. A cargo of melado or sugar is not a hard cargo on a vessel. The vessel lay three hours aground with a full cargo. He could not say that the vessel then started a butt. He did not examine to ascertain if she did. He had heard of a vessel called the Silas Alward, and heard she had been abandoned on a voyage from Cardenas to New York. When the Brothers' Pride grounded she had all sails set, and was sailing along two or three knots an hour. She maintained her position in the water after she grounded, as the tide was rising. She grounded very soft. It being six o'clock, the court adjourned until the morning at 10 o'clock.

In the morning Mr. Kerr, senior counsel for the prisoner, resumed the cross-examination of the witness, Tracey C. Roberts. The book of protests was again taken up and witness questioned closely concerning the statements in this document that he signed. He may have said, at the



protest inquiry, that at 6 a. m., on the morning of the abandonment, the vessel labored heavily and that a heavy sea was running. If he said this, it was substantially true. If he subscribed to the following: Wind increased until noon, when it was blowing a heavy northerly gale, with very heavy cross sea, in which the vessel labored heavily and strained—that statement was false. If he said this heavy weather continued until about 8 p. m., the vessel continually laboring and straining severely, such a statement was false. He could not say he swore to the foregoing sentence, though he subscribed to it. He thought he had said that the pumps were regularly attended to, and also that the vessel was making considerable water; also that the crew were at the pumps during the night, and the wind was blowing fresh from the north-east. These statements were partially true and partially false. It was true that the crew was constantly at the pumps. He said that May 7th came in fresh, and that the ship labored heavily; this was untrue. If he said the leak was rapidly increasing on the pumps, that was true; if he said there were 5 ft. of water in the hold Tuesday midnight that was nearer the truth than otherwise. He did say that notwithstanding all efforts made by the crew the leak increased at the rate of one foot per hour. This was substantially true. It was false if he said the vessel had 12 ft. of water in her hold at 5 o'clock Tuesday a. m. There was then about 8 ft. in her. If he said the crank of the port pump broke during the night that was false. It broke in the forenoon. If he said that from Tuesday forenoon until the succeeding forenoon the pumps were continually worked that was true. Witness then went into an explanation from the chart of the winds, currents of the Gulf Stream, and relative position of the Florida coast from the spot where the vessel was abandoned. Had the vessel been run ashore on the Florida coast the night she was abandoned she would have gone to pieces, cargo and all. She would have grounded 5 miles outside the high water mark. The book of protests was again taken up. If he said at the protest inquiry that when about two miles off they saw her settle over on her side that was true as she was acting in a sinking manner. If he said she went down head first that was false; if he said she disappeared, she did—to view, and receding he supposed she did go down. Witness' deposition at the city police court was then gone into and a searching examination followed. Concerning the log book witness said he told Mr. Alward, one of the counsel, first about it and he never made it known to any of the counsel previous to yesterday that he had saved the log book. Of this he was positive. He had not concocted his evidence previously to going before the city police court. He did say at the protest investigation that the protest was extended from memory, the ship's log book being lost in the breakers on the coast of Florida. This statement was false. Mr. Kerr then proceeded to re-examine and question the witness upon the Consul's Naval Court investigation. Witness said he signed the deposition he made before this court of inquiry and swore to it. He presumed he signed his testimony before this court after he had testified.

His Honor reminded Mr. Kerr that he had asked all these questions yesterday. "God bless my soul and body," replied Mr. Kerr, "I only made a preliminary examination of the testimony." Mr. Kerr then

continued to question the witness more particularly upon the testimony. If he said before the Naval Court that the logbook was lost on the beach at Florida, that was false. The court then adjourned for dinner, after which spectators occupied all available space. Resuming Mr. Kerr questioned the witness upon the relative positions of the air streaks of the vessel, and announced that he had recently made a practical examination of the interior of a sailing vessel, and wished it to be understood that he was now posted in ship lore. One cask, witness said, exploded in the hold; "that is," said Mr. Kerr, extending his arms, "it got so big inside that it 'busted,' and the contents were pumped into the sea to sweeten the fishes' tea." (Audible laugh.) Witness continued, the vessel was well stowed aft and reasonably well forward, and larboard and starboard all the cargo was put into her that could be. The vessel leaked some coming out from Cardiff, leaked more than a new vessel would and was not newly sheathed at Cardiff. Such a vessel as the Brothers' Pride would be generally classed as a leaky old vessel. She drew 14 ft. while in the dock at Cardiff but would probably be more buoyant when she got out to sea. Mr. Kerr then again took up the Naval Court proceedings and re-questioned the witness closely concerning his testimony before that court. All hands, the witness said, including the captain, pumped the vessel on Tuesday. She was a pretty stiff vessel and did not pitch or roll any. He did not state before the Naval Court that the pump was one of Wilson's make and of iron material. If he stated that, at 2 a. m., there were 10 ft. of water in the hold, that was a lie, there was only half that quantity. If he said she had 12 ft. of water in the hold at 6 a. m., and just before they left her, that was false—a lie. There was not 11 ft., nor 10, nor 9, nor 8, there was about 6 ft. in her. When he quit her at 12 o'clock the lower deck was even with the water. Mr. Kerr reminded witness that he said, yesterday morning, there was 8 ft. in the hold at 6 a. m., and that now he had brought it down to 6 ft. Some dispute followed as to the fact of Mr. Kerr's assertion, but reference to the Chief Justice's notes confirmed the assertion. The vessel was set on fire at about 11 a. m. on Wednesday. When he rowed around her he saw holes in the bow port, and water pouring out of them when she would rise on the waves. This concluded the eighth day's proceedings, it being 6 o'clock. In the morning Mr. Kerr resumed the cross-examination of the mate Roberts. If he stated before the Naval Court that vessels, on leaving a port where the weather is very warm, make some water when getting outside, that statement is true. If he stated that the bow ports were between decks, that was wrong. If he stated the men lived in the deck house, that was true. If he stated that the cargo was stowed right up to the stern between decks, that was true. It was true that the port lashings were all good and secure. He did say before the Consul they did not carry much sail so as to ease the leak. That was incorrect. The vessel carried all sail. Putting the naval proceedings aside witness said he ordered the boats out. He did not advise the captain to go further, nor did any person on board do so that he knew of. He possesses a certificate as master, but did not have it with him because he had not thought it would be required. Resuming the Naval Court proceedings witness said he did not



say before the Consul he was in the hold looking for the leak. He was in the hold on Tuesday afternoon. He was not down the lazarette. There was no other way of reducing the leak save by the pumps. The logbook was kept by witness. The captain may have looked at the book after leaving Cienfuegos. He signed a statement that the logbook was lost in the surf off the coast of Florida. This was not true. He said nothing about the logbook at the police court inquiry. He was not asked about the logbook. He did not say yesterday that he made no entry in the logbook from the time the vessel left Cardenas until she was abandoned. They had the Russian Trisinski in irons 7 or 8 days on the voyage out from Cardiff. He was put in irons because he refused to work. Jerry Spline also refused to work and was put in irons, but knocked under and went to work the next day. The Russian was not fastened aft so that he could not come forward to the forecabin. He had not much hesitancy in starting this ball of persecution. He had not been on unfriendly terms with the captain. Whether it was his duty to go before a notary with the captain and crew to enter a protest he did not know. He had not been educated up to that point. It was his duty to know what he was signing before the notary. In this particular he did not do his duty. If he swore to it he swore false.

Mr. Kerr—It was perjury then?

The question was overruled. Witness continued and said it was his duty to swear truly. He could not say he saw Captain George Simpson in the Eastern Hotel on 1st January, 1880. He knows a man named Captain Simpson and saw this gentleman about the above hotel about the time mentioned. He might have had a conversation with Simpson. Thomas was at the hotel at the time.

Mr. Kerr—Did you say to Simpson on New Year's day, 1880, that you were not waiting for any vessel now; that you had a chance to make money now and would pitch honor to the winds? A. I did not say all this to Captain Simpson. I may have said some of it. Witness then corrected himself. He had no recollection of such conversation.

Mr. Kerr—Did you say that the underwriters were paying you \$5 per day, and \$2.50 per day for hotel expenses, and that you could get board in Brooklyn for \$1 per day? A. I did not say these words to Captain Simpson, and did not tell him that I was not going to sea any more.

Mr. Kerr—Did you have a conversation with Mr. Charles Palmer before you went to New York? A. Yes, I had. The court adjourned for dinner, after which witness said he did not tell Mr. Charles Palmer that he (witness) was to receive \$500 for going to New York and swearing that the cargo was not melado.

Mr. Kerr—Did you at any time in December, 1879, tell Mr. Palmer in his office that you were getting any reward, and what reward, for saying the cargo was not melado, and that the loss was not a fair loss, or words to that effect? Witness—I did not. Continuing, he said he did state before the Naval Court that he joined in making the protest on Wednesday. He did say before the Naval Court that they kept the vessel in sight until two or three miles distant from her. This closed Mr. Kerr's examination of the witness, and Mr. Pugsley opened the re-

examination of the witness. Mr. Pugsley asked the witness to state the identical conversation held with Mr. Charles Palmer.

Mr. Kerr objected, but His Honor concluded to receive the evidence, and proceeding, witness said he was in Mr. Charles Palmer's office and saw the gentleman who wanted him to sign a paper, and wanted to know how many casks were in the vessel.

Mr. Pugsley—Why was the amount you received from Mr. Cleveland changed from \$26 to \$50 per month?

Mr. Kerr objected to this question but the court overruled the objection. Witness said that when the change in pay was made he was in New York, and was offered the position of master of a vessel at \$50 a month. This fact he communicated to Mr. Cleveland, who then increased his pay. This vessel was the barque Providence, belonging to Guy, Bevan & Co. She was bound to Cienfuegos and thence to Philadelphia. Witness then came to St. John and appeared at an investigation at the St. John Police Court.

Mr. Pugsley asked witness what communication he had, and if he had any communication with Mr. Cleveland.

Mr. Kerr objected.

Mr. Pugsley argued that Mr. Kerr's questions had been directed to endeavor to discover a conspiracy between witness and Mr. Cleveland, and it was desirous to make the point clear.

His Honor favored Mr. Kerr's objection, and witness continued: When he stated he had suspicions that the vessel was destroyed by the hand of man, he meant that she had been bored.

Mr. Pugsley—Do you know if the prisoner saw the contents of any of the casks?

Mr. Kerr objected, and His Honor agreed to reserve the point for Mr. Kerr, though, at the same time, receiving the answer. Witness said the captain saw the cask that was open on deck. Most of the casks that he handled had a swashy sound. Starting a butt, witness said, was springing the planks of the vessel from the treenail fastenings.

To His Honor—The vessel's depth from lower deck to keel was fourteen feet. If he said before the protest inquiry that the vessel was stowed up to the stem that statement would have been senseless. Mr. Pugsley said his object in such a question was to show the inaccuracy of the evidence given before the notary. The witness was then questioned about the log book. He had heard the prisoner say he had been at Cardenas previous to this voyage.

MR. BESTE, a commission merchant from New York, was examined by Mr. Alward, and said he had been dealing in melado for the last 25 years. He knew what melado was.

Mr. Kerr at this point objected to the evidence. Mr. Beste, he said, presented a very respectable appearance before the court, but he (Mr. Kerr) could not see how this evidence about melado would effect the case against his client. He felt that it would be iniquitous on his part if he did not resist such testimony. His client was employed to convey a certain article from place to place. He conveys the article, signs a bill of lading for it and delivers it up. What earthly business, asked Mr.



Kerr, is it to my client what that cargo was? What the cargo was is a matter concerning the buyer and seller.

His Honor replied that he could not see that the evidence was so entirely irrelevant as to admit of its being shut out. He would, however, reserve the point for Mr. Kerr. Witness continued: Melado is undrained and unpurged sugar and heavier than molasses, about one pound heavier to the gallon. When poured into an air-tight cask it becomes almost solid. He did not come down here as a witness in this case. He came down on other business. The different samples shown to the preceding witnesses were shown to Mr. Beste. An article in a small bottle, No. 7 specimen, he said was melado, but of poor quality. The article in No. 2 specimen he termed "tank" bottom in quality. No. 1 specimen also looked like "tank" bottom and was burnt. The fact of burning makes it gummy and prevents it crystalizing. No. 5 specimen he pronounced melado. This specimen was shown to the jury. No. 6 specimen he pronounced also of good quality.

Mr. Thomson—If Mr. Kerr said it was loaf sugar—?

Mr. Kerr—Stop, stop, now, I object to that. The question was unanswered. Witness continued, and said Nos. 3 and 4 were good specimens of melado. The large bottle, No. 8 specimen, offered by the defence, he pronounced as not being good melado, in fact not melado at all. One of the characteristics of melado is to have a grain. Melado is shipped in tight melado hogsheads, which are smaller than sugar hogsheads. After being put in a cask it becomes hard, and has on the top of it a liquid like molasses, six or eight inches in depth. This liquid is similar to boiled molasses, and would be difficult to identify if taken away from the cask. Melado is made by the sugar cane being boiled to a granulating point, or point of crystalization. It is then poured into these casks while hot and allowed to cool in them, and forms into solid pieces. Such parts as do not crystalize remain liquid on top. In other words it is sugar and molasses combined. It is different from Muscovado sugar in that the molasses in the sugar is allowed to drain out. Melado is unpurged Muscovado sugar. A cask of melado will weigh about one thousand eight hundred pounds. A cask of good melado when rolled should not swash inside. It must be of a very poor quality to do that. Melado is sold by weight.

Mr. Kerr wanted it understood that he objected to all this evidence. Witness continued: Melado is worth now  $5\frac{3}{4}$  cents per lb., and last May, as far as he could remember, it was worth 5 cents per lb. These are wholesale prices. There is an export duty upon melado in Cuba;  $3\frac{1}{2}$  reals per lb. equals  $1\frac{3}{4}$  cents American or  $3\frac{1}{2}$  shillings per  $\frac{1}{4}$  cwt.

Mr. Thomson—Would a cargo of eight hundred and sixty-three casks invoiced at \$36,439 be a good or poor cargo? Witness could not state without calculating. A melado cask will hold about one hundred and fifty gallons U. S. measure, and each gallon will weigh twelve pounds, and was worth in May 5 cents per pound. Water weighs 10 pounds to the gallon and molasses 11 pounds. Melado casks will leak if badly coopered, at least the liquid portion of it will run through very slowly. To get at the article a head had to be taken out of the cask. He never heard of melado exploding. Molasses will explode in a hot atmosphere.

A mixture of molasses and water will not explode as readily as molasses, of which only the best quality will explode. Sun heat will not liquify melado; it will dry it out. The cask, melado and all will weigh about one thousand nine hundred and fifty pounds. A vessel could not carry as many sugar hogsheads as melado hogsheads. Molasses hogsheads are forty-two inches long and thirty-four to thirty-six inches bilge. Melado is always put in tight molasses hogsheads.

Mr. John Kerr cross-examined the witness. He would swear that the contents in No. 8 specimen was not melado. Melado casks are regular molasses casks. He could not say a melado cask is one stave shorter than a molasses cask. He has had no experience in making melado. He only knows from commercial knowledge. The largest sugar hogsheads come from the north side of Cuba. The heads of the south side of Cuba hogsheads are thirty-four inches; on the north side they are thirty-six inches.

To Mr. Thomson—He has seen the manufacture of Muscovado sugar. This completed Mr. Beste's testimony and documentary evidence was then offered in the Brothers' Pride's bill of lading dated at Cardenas 2nd May, 1879. Mr. Kerr objected to the evidence. His Honor, however, accepted the evidence reserving a point for Mr. Kerr. The bill of lading stated that the cargo consisted of eight hundred and sixty-three hogsheads of melado, shipped by Washington & Co. to Ricardo Acosta, New York, the freight on the same being \$5.25 per hogshead. It was signed by the prisoner. The court adjourned until morning at 10 o'clock.

When the court opened in the morning Mr. Pugsley announced that he had received, by express, Roberts' trunk in which he supposed was the log book. He asked that it be produced by the officer who had it in charge. This was done and it was opened by Roberts.

Mr. Kerr thought it was quite out of the question to produce the log book.

Mr. Thomson said that the prosecution had to get at the facts link by link. On what principle can Mr. Kerr say the log book cannot be shown? If it was shut out it would be a virtual admission on Mr. Kerr's part of the guilt of his client. He did not know what new developments might yet arise in this trial for new facts were coming to light daily.

"Surely your Honor will not imperil my client's life," said Mr. Kerr, "by allowing this witness (Roberts) to be put on the stand again—this man paid to give testimony—who related his horrible perjuries on the stand, who swore there were not any entries made in the book from the time the vessel left Cardenas. As the head of this court and the criminal law your Honor should give some protection to my client."

Mr. Thomson replied in regard to Mr. Kerr's insinuation that the witnesses were paid by the prosecution, and repeated his previous remarks. He referred to the rumors regarding the case, and that the newspapers had published one rumor about a sum of money being deposited to carry on the prosecution. He made an attack on the press and denied the rumor. He even threatened to ask the committal of the reporters, and asked the court to suppress the publication of comments during a trial.

Mr. Kerr denied that he had circulated a single rumor regarding the case, "but" said he, "suspicion haunts the guilty mind."



His Honor said that the publication of rumors in the papers regarding the case was highly improper. No comments should be made on the case but the evidence only published. Jurors should be unprejudiced, and persons should not make observations which would in any way influence the jury. In regard to the counsel, he wished they would not make any remarks upon the witnesses. He (His Honor) had nothing to do with the fact whether the witnesses were paid to give testimony or not, or whether this case was a conspiracy or not. As Roberts stated on the stand that the log book was still extant he would allow him to go on the stand again and produce the log and prove it.

TRACEY C. ROBERTS took the stand again. He stated that, previous to this morning, he last saw the log book in January in New York. He identified the log book as that belonging to the Brothers' Pride. He had charge of it from Cardiff to Cienfuegos, and thence to Cardenas. Also from Cardenas to the time of abandonment. He saw it when he came in court this morning. [Mr. Pugsley here offered the book in evidence.] Roberts was then cross-examined by Mr. Kerr and stated that he never told Mr. Cleveland anything regarding the log book, and did not remember whether Mr. Cleveland asked him if he had the log book. [The log book itself was taken out of one of the dunnage bags belonging to the mate that was inside the trunk. The trunk in which the mate alleged the log book had been brought from the vessel was also produced.] Witness said he may have put it in the bag in New York. Witness identified the writing all through the log book as his own. There were dates in the log book of Monday, May 5th, 1879, and Tuesday, May 6th, 1879. The entry on Tuesday was made before noon. The entry on Monday he could not state when he made it. The witness then proceeded to state the difference between nautical time and civil time. A nautical day begins at midday. Tuesday would begin at noon Monday. There are twenty-four hours in a nautical day. The book was never out of his trunk and never laid upon the top of the safe in Besnard's office, New York.

Mr. Kerr—Did you not say yesterday that you made no entries in the log book between the time of leaving Cardenas until abandoning the vessel? A. I may have said so; I do not remember; I may have said that I made no entry in the log book since the abandonment of the vessel.

Mr. Kerr—Is your memory so bad that you cannot remember your oath from day to day? A. You ask me so much that—"Stop, stop," said Mr. Kerr, "that is not an answer to my question." Witness, after some further hesitancy, said he did not remember saying he had not made any entries after the abandonment. A nautical Wednesday would begin on Tuesday. The entries in the log book of Monday, May 5th, 1879, and the following Tuesday were read, and the witness proceeded to state the practice of making the entries from day to day. Tuesday, nautical time, he said, began at noon on Monday. The entries show the transactions up to noon on Tuesday, civil time. At noon and 4 a. m. previously the crew were constantly at the pumps. The book, witness said, showed the vessel sailed 7 knots an hour, viz., wind 4 knots and Gulf Stream 3 knots. The whole log book was then offered by Mr. Pugsley as evidence. Mr. Kerr objected. The other voyages, he said, were entirely irrelevant

to the case. It will be May, he said, before we get through with the case if such extensive evidence is admitted. His Honor said at present he would not receive any portion of the log book other than that concerning the voyage from Cardenas. Mr. Thomson argued against His Honor's judgment in the matter. It was a part of the case for the Crown to have the whole of the log book submitted.

Mr. Kerr—Oh, do not say part of the case for the Crown!

Mr. Thomson continued to advocate his objection to the ruling of His Honor.

Mr. Kerr claimed that the evidence and the combination that produced it were alike extraordinary. His Honor interrupted Mr. Kerr, for whom he would reserve the point at present. Mr. Kerr then proceeded to cross-examine the witness. The pumps broke on Tuesday morning. At noon Tuesday the people were constantly at the pumps. Mr. Thomson commenced the re-examination of the witness, who said the term people means the watch. "People constantly at the pumps" is a nautical phrase, a technical term. At this point the entire contents of the log-book were admitted as evidence, His Honor coming to the conclusion that he would do so before the mate left the stand. He reserved a point, however, for Mr. Kerr, who then said he would not cross-examine the witness upon the contents of the book written previous to the departure of the vessel from Cardenas. He was perfectly helpless about its contents. The clerk then commenced the reading of the log-book, a record from the time the vessel sailed from Cardiff, arrived at Cienfuegos and thence to Cardenas. The reading occupied some time and was not finished at the time of adjournment for dinner. In the afternoon the courtroom was crowded with spectators, their numbers being more than any other day since the commencement of the trial. When the court opened the clerk concluded the reading of the vessel's log.

GEO. HENRY HALL, steward of the vessel, was called and examined by Mr. Alward. He said he was born in Annapolis, N. S., and is 25 years old. He knows the prisoner and first became acquainted with him when he joined the vessel at Cardiff. Witness shipped as cook and steward. The vessel had 10 hands all told. He knows Howard C. Thomas, who was second mate, and joined the vessel on the 27th December; she sailed on 1st or 2nd January, 1879. He saw the captain and Thomas together in a restaurant at Cardiff. They were all the time together when he saw them. They were very intimate on the voyage from Cardiff to Cienfuegos. The night the vessel sailed from Cardiff the captain called Thomas and a gentleman belonging to Cardiff down into the cabin to have a drink. Witness was in his own room at the time. The intimacy continued until he left them in New York. On board the vessel the captain and mate dined at the first table and witness and Thomas at the second table in the cabin. From Cardiff to Cienfuegos they had some rough weather during the first part of the voyage; the balance was fine. The vessel was laden with coal; they discharged at Cienfuegos and then proceeded to Cardenas. On the voyage from Cienfuegos to Cardenas he heard while below the cry of "breakers ahead." This was after they had rounded Cape Antonio. He came immediately on deck and found the vessel in shoal water. It was a clear night and the coral reef was



plainly visible, and as they came round he could see the breakers roll. He could not say what tack the vessel was on. He had a chest—bought it from Capt. Tower after leaving Cienfuegos; he had also an ulster. The captain asked him if he wanted to buy an ulster, in the presence of Thomas. He purchased the ulster for \$16, and afterwards bought the chest for an additional dollar. They were lying in the Bay at Cardenas. Witness was the only one ashore there. The captain went ashore almost every day. Thomas was ashore almost every day with the captain. They took on board a cargo at Cardenas. The stevedores were Cubans. One of them, present in court, witness identified. His name was given as Don Jaun Melian. Melian was there almost every day the cargo was being loaded. Witness speaks a little Spanish. The captain gave orders about the stowing of the cargo, and ordered the witness to tell the stevedores not to stow the cargo too far up in the eyes of the vessel. Some of the cargo was taken aboard outside the inner grounds. He has been in the West Indies before and has seen melado previous to this time; saw some in Cienfuegos in 1872. When on board a vessel he saw what was said to be melado. The cargo of the Brothers' Pride was in casks; one of them was on deck. He could not remember the smell of the article; the contents of one cask was run over the deck. It had a foamy look and was like beer. There were no lumps. The eight specimens of melado in the possession of the court were then shown witness, who could not compare the substance in the casks with the specimens. The crew washed their hands in the substance in the casks. He washed a pair of pants in some of it, taking the material from a cask up-ended on deck. He took two buckets from the cask and probably more. This cask came on board the same day that he washed his pants. It stained his pants a nasty yellow color from a light grey color. It made them a "greenish yellow." He then hung his pants over the side of the vessel into the water but the greenish yellow held fast and he threw the pants away. He knows Geo. Riley and saw him on board the Brothers' Pride at Cardenas. Riley belonged to the T. C. Jones and was in company with Howard C. Thomas. The T. C. Jones was anchored not far from the Brothers' Pride at Cardenas. He saw Thomas take a trunk from the Brothers' Pride to the T. C. Jones. It was Thomas' own trunk and he brought it out of his room. He knew some of the contents of the trunk, which were books and a cruet stand. He saw the trunk since in jail in Thomas' quarters. In hauling out from the bay at Cardenas to the cays, the Brothers' Pride grounded and remained aground about ten hours. At the time he saw thick muddy water all round the ship. The captain was aboard, and went ashore the same night, Friday, from the cays. Thomas went with the captain, and he did not see them again until Monday morning at 5 o'clock. They sailed that same day, early in the morning. They had a fine day on Monday; no heavy seas. The vessel had only side lights, but the glasses were all smashed and they could not use them. At Cardenas he told the captain, on the day they sailed out to the cay's that these lights were smashed. The captain said they did not want any side lights, as they would only be five or six days going to New York. Witness made no reply. The weather was fine on Tuesday, the second day after sailing. He did not notice the men pumping on Tues-

day. It was his duty as steward to keep the lamps in order. He did not know of the accident to the pumps. In the afternoon of Tuesday he remembered going to his own room, but not to the captain's cabin. [Plan of cabin, drawn by Thomas, shown to witness.] His room was on the port side of the vessel, and close to the captain's room, and both rooms were connected with the deck by the same companion way. The captain's room ran the whole length of the cabin. His room was next to the w. c. The witness then drew a plan of the cabin and explained it to the jury. On Tuesday afternoon he went to his room and could see into the w. c. ; he went down the forward companion way. In the w. c. he saw Captain Tower and Thomas. The w. c. was only large enough for two men to stand up in. As soon as Captain Tower saw witness he slammed to the door of the w. c. ; he was within ten feet of them when he saw them in the w. c. Witness then went into his own room and returned to the deck. On Tuesday night the weather was fine and there was no pitching ; he went to bed about 9 o'clock. Thomas woke him up about 12 o'clock, proceeding to the deck he found the men pumping. It was then a fine, bright night. Witness pumped and the men pumped ; he heard the men ask the captain to get the boats out. The captain said all right ; what's to be will be, and he gave orders to the mate to get the boats out. Two boats were put out. Witness got his things ready—the ulster, his shirts, a suit of clothes. The captain took every thing he had excepting his bed, witness helping him to put them in bags. The day before leaving Cardenas the captain had some clothes rolled up in a Union Jack ; this bundle was put in a bag. The mate's trunk was taken into the boat. They had no trouble in boarding the boats. They took some provisions, biscuits, fish, preserves and a little rum. Rummaging the drawers in the cabin, Thomas found some photographs in a drawer ; they were photographs of two ladies. The captain asked afterwards where they were. Witness said he hadn't them. Later the captain took the pictures from Thomas, and afterwards threw them overboard. After this the captain brought a book on deck from the cabin ; it was about the size of a sheet of fool's cap and the ordinary thickness of a log book. The captain extended the book to witness and told him to tear it up ; he could not remember if the captain gave it to him in his hand, but witness saw captain go astern with it and tear it up and throw it overboard. He served the crew with coffee before daylight on Wednesday morning. Witness was in the captain's boat with Thomas and William, Jerry and Joe Anderson ; he was not sure that William was in their boat. They had no difficulty in getting into the boats, and rowed around the vessel quite a little time watching for the vessel to go down. After a while Captain Tower ordered witness and Thomas to go aboard, and Jerry Spline accompanied them. Thomas sounded the pumps and witness descended to the cabin, Thomas following. They overhauled the drawers and found in the locker some preserves and began eating them. They then got into the boats, pulled off again and waited quite awhile ; Captain Tower thought it queer she didn't go down. Witness said she would sink when she became full. The captain asked Thomas if he thought he could start a butt. Witness and Thomas and two men went aboard again and Thomas endeavored, with a plank, to start a butt ; he could not start the butt because there



was not room to use the plank. Thomas went aft, and was absent about ten minutes, returning with an auger. Witness never saw this auger before; he previously had seen augers in the tool chest in the lazarette. With this auger holes were bored in the vessel; Thomas and he bored them. Water came in after he bored and struck him in the stomach. He then went on deck, got in the boat and pulled away for the vessel. The water was not rough; there was no wind and the sea was calm. After a little Captain Tower gave orders to Thomas and witness to go aboard and set fire to her. The captain first asked how much oil there was. Witness said there was a tin pretty near full. The captain asked Roberts, the mate, how much oil and paint there was aboard? Witness and Thomas went aboard again, down the lazarette. Witness gave Thomas the oil can—kerosene. Witness wanted to go down the hold from a hatch in the lazarette, but Thomas would not let him. Thomas pored oil over the lazarette and witness set fire to the vessel. Then they went into the cabin, through the after companion way; there was no water on the floor. Here they poured more oil and witness touched the match. They then proceeded to the forecabin and did the same thing. After this they returned to the boat and rowed away. The fire went all through the rigging and sails; they were then about half a mile distant from the vessel, laying on their oars; the hour was about noon. They then rowed away for Florida. The captain's boat had a sail which was not put up until next morning. During the night a slight breeze came up and in the morning they took the mate's boat in tow; it was blowing pretty fresh. They reached the coast about 5 a. m., on Thursday, the mate's boat getting ashore first. It was Mosquito Inlet where they landed. They camped on the beach that night. He saw the log exposed to dry on the top of the trunk at Mosquito Inlet. They then proceeded across to Titusville; thence to Jacksonville down the St. John River. Then they came to New York. At Titusville he saw the captain and Thomas and another gentleman going to Col. Titus'. He went to a notary public's office in New York and signed a paper there. The captain, Roberts and others of the crew were there also. [Mr. Hughes, the notary, was pointed out to witness but he could not identify him.] Just before going to sign the paper witness asked the captain when he would receive his pay. The captain said after you sign the protest. He could not say whether the protest was read over to them separately or not. It was read over to him just the same as one would read a newspaper; he did not understand a word of it; he signed it and thought he had been sworn; at least they put a book in his hand. A day or two after he got his wages at the Consul's office. He was before Mr. Archibald, the Consul, and made a statement to the Consul, and before doing so, had a conversation with Captain Tower. Witness made his statement alone. After the captain's examination, witness asked him what he should say when he went in. The captain said to say as little as he possibly could, and by no means to say the ship was burned, and be careful and tell the ship went out of sight, and that there was a strong wind blowing. He stopped at the Eastern Hotel, New York; the captain and Thomas also. Roberts was living aboard ship. From New York witness went in the barque Nippon, of Bath, Me., to Yokohama; this voyage lasted six months.

He parted with Captain Tower on the 24th May, and sailed on the 22nd June for Yokohama. He left the Nippon on the 15th Jan., 1880, and then sailed by steamer for San Francisco, thence to New York, where he saw Mr. Cleveland in the month of February. He then came to St. John with Mr. Cleveland and made a statement at the Police Office; he has remained in St. John ever since, receiving \$25 a month and his board. There were no signals of distress made, and nothing thrown overboard to lighten the vessel.

Mr. John Kerr then opened the cross-examination. Witness heard the mate's evidence. Before appearing at the police office he read no papers and did not read Thomas' evidence in the newspapers before being sworn at the Police Office. He read his own testimony once, and only once. He read Roberts' statement made before the Police Magistrate, probably in the St. James House; he could not swear he had not read it at the Defferin Hotel. He has a very bad memory and could not remember much about the Brothers' Pride. He read Thomas' statement more than once and not more than twice. His memory is bad, but he can remember his evidence before the police officer. On the voyage from Cardiff Trisinski was in irons. He could not say he was in irons more than two days. The court then adjourned.

Hall took the stand again in the morning. His cross-examination by Mr. John Kerr was continued. He said his memory was bad; he did not remember Mr. Hughes who was present; he did not see him in New York; he was, however, at the notary's in New York where he was sworn to speak the truth but did not understand to what he swore. If he swore falsely it would be perjury. He did not remember whether the notary, after he read the statement, asked him if it was true. He did not know how many days Trisinski was in irons and did not prepare any meals for him; he was kept down in the lower hold. Jerry Spline was also put in irons, but he did not know how long; he was there one day anyway. He did not remember any others of the crew being in irons. He lived in Annapolis but did not go by any other name than George Henry Hall. He remembered being at the Police Office and made that mark which appears on the deposition before his name. He was never charged with any crime. The captain sold him a chest and ulster while on the way from Cienfuegos to Cardenas. At the Police Office he said that he thought he bought it on the way from Cardenas to Cienfuegos; his memory has improved since. On the Sunday night before they left Cardenas the weather was fine. He was ashore once at Cardenas. He did not remember swearing at the Police Office that he was not ashore. While they were stowing the cargo he was engaged at his own work. He was down the hold once or twice when the stevedores were at dinner. Since the Spaniard from Cardenas had arrived he had seen him about every day. He (the Spaniard) recognized him at once. He did not know the name of the head stevedore. He did not remember whether his name was Jerry, but he spoke English. He remembered a stevedore named Claudio. On the morning they left Cardenas the weather was fine. They ran aground near the cays. There was muddy water all round the vessel. He could not remember whether she was ashore four hours, but he thought about two hours. On Monday afternoon there was not a heavy



sea on. At night he was below. There was a nice breeze, but he did not think a chopping sea nor rough sea. On Tuesday morning the weather and sea were calm; he could not see Cuba then. There was not much sea running. In the afternoon the weather continued fine with a moderate breeze and at night it was the same. He went below about eight o'clock and remained there until Thomas called him, about twelve o'clock, when he helped to pump ship; he pumped until he was tired; he did not work an hour. All the rest of the men, except the officers and the man at the wheel, were pumping; Roberts also pumped. When the men got tired they went to the captain, some time before daylight—about an hour—and said they were played out; they could not pump any more; the ship was going down, and the water was gaining fast on them. They asked the captain to put the boats out; he did not see the captain pumping, but would not swear he did not. The captain gave orders to get the boats out, and the pumping then ceased. After Thomas called him, he went below five or six minutes. When he got up at midnight the ship was not rolling. On Wednesday morning there was a fine breeze and the ship was going on freely; he did not notice whether all sails were set or not. When they left the ship the sea was not calm; it was before 6 o'clock when they took to the boats. The captain, second mate, Jerry, William and himself were in one boat. He did not notice them pumping on Tuesday. After they took to the boats they pulled off nine or ten lengths from the vessel. They waited over an hour before they went on board again; he (Hall), Thomas and Jerry went on board; he did not remember whether William went. They remained on the vessel about 20 minutes, and got into the boats again. The second time they went on board they remained an hour, and when leaving the second time, they pulled away and returned again in about two hours; he and Thomas went on board alone the third time. He then described the setting of the vessel on fire as given in his direct examination, explaining it by the plan he prepared yesterday. He did not remember whether all the sails were set at that time. While they were in the boats, about half a mile away, he saw the sails catch fire; he did not remember whether they were set or partly clewed. If he did swear at the Police Office that they were set he swore falsely; he did not swear so at the Police Office. As far as his knowledge went, he had given a correct description of the loss of the vessel. He did not think that the captain and first mate were not good friends; they agreed very fairly. Roberts did not assume that he knew more than the captain. [Bottle of melado produced.] He did not remember seeing that bottle in the Police Office. The contents of the bottle in the Police Office was not quite so thick. At the Police Office, when this bottle was produced, he did not say it was melado; did state there were two kinds; said there is one other kind that is not so lumpy or sugary as this; would not swear that the contents of another bottle produced was melado; did not state at the Police Office that the other kind was the kind he saw aboard the Brothers' Pride; said at the Police Office that the other kind was the kind he saw on board the Brothers' Pride, it was dark like dirty water. He has seen melado a great many times; has no other experience regarding melado except what he heard or saw at Cienfuegos, but he would swear that what he saw on board the

Brothers' Pride was not melado; would not swear the whole cargo was not melado; did not remember whether it rained while the cask was without a cover on deck, but he thought so from reading Thomas' statement; did not put his hand to the bottom of the opened cask; did not know what a pair of side-lights cost, whether it was from \$18 to \$20 a pair; did not remember hearing the captain tell him at Cardenas that the side-lights cost about \$50 there, whereas he could get them in New York for much less. There were two pair on board the Brothers' Pride, which got broken coming out from Cardiff; the port light and the starboard light were broken; they were broken by the men taking them in from the stand. When they bored the auger-holes they bored them in the starboard side; he did swear at the Police Court that he bored the holes in the port side, but he made a mistake. He identified his signature attached to a protest made before the notary. The contents of the protest he swore to, and it was read over to him before he signed it; he did not understand a word of it; understood that he made the protest to clear the ship. If he swore at the protest that on May 6th the vessel labored hard, a heavy sea running and wind increasing, that was not true.

Mr. John Kerr—Was it a lie?

Mr. Thomson objected and His Honor thought it was a harsh way of putting the question, but if Mr. Kerr insisted it would have to be answered.

Mr. D. S. Kerr said he wanted the question answered. He wanted to show that the witness was guilty of wilful and corrupt perjury.

Mr. John Kerr—Was it a lie? A. It was not true.

Mr. John Kerr—Was it a lie? A. It was not true. Mr. Kerr repeated the question and witness replied as before. If he had sworn the wind increased to a heavy gale it was false. He swore to the protest though he did not understand it. If he swore the vessel continued to labor and strain severely and heavily it was false. If he swore that from this time the wind began to abate he could not remember whether it was true or false. If he swore at the protest there was a gale that was false. If he swore the vessel was leaking and the pumps were properly attended to, that was true. He signed and swore to everything in the protest. It was not true that May 7th came in with heavy winds and seas. He did not remember that shortly after midnight he sounded the pumps and found  $5\frac{1}{2}$  ft. of water in the hold, and in an hour afterwards found 6 ft. in the hold; he did not sound the pumps; it was true the crank of the port pump broke during the night. Considering that there was now no hope of saving the vessel they concluded to abandon her; this was a fact. He did not see the vessel go down head-first as he had stated in the protest; he swore to this and it is false; did state in the protest that the protest was extended from memory, the ship's log book being lost in the breakers at Florida; this was untrue; did not understand the sentence when it was read over to him. Witness stated that Mr. Alward had spoken to him about his evidence since the commencement of the trial. Mr. Cleveland is paying him \$35 a month and \$5 for his board; he is boarding at the Central House, and pays \$5 a week there; saw Mr. Cleveland at the Hotel Dufferin several times; saw Thomas' statement made to Mr. Cleveland, but did not read it, merely saw it lying on a table.



Mr. Alward always told him to tell the truth ; he could not remember everything ; his memory is bad on some points ; swore at the Police Office that the book handed to him by the captain, and which the captain afterwards threw overboard, looked like an account book. The specimens of melado were then shown witness and he identified No. 1 specimen as melado, at least he had been told it was ; from his own knowledge he could not say it was melado.

The court adjourned for dinner after which witness continued : His wages from Mr. Cleveland began after he arrived at San Francisco, or in the early part of February ; receives \$35 a month and \$5 per week for his board, he supposes as long as Mr. Cleveland requires him ; has no agreement with Mr. Cleveland. He was, he said, examined before the Naval Court and made his statement by himself, and to which, he thought, he had made oath ; the inquiry consisted of questions and answers. If he swore at the protest inquiry that it was blowing hard on Tuesday, May 6th, that was false ; if he swore there that he took his turn at the pumps and afterwards made coffee for the men that was true. He did swear, and it was true, that he did not know the depth of water in her hold ; also, and that after getting away half a mile she went right down ; he swore at the protest that she had all sail set when she went right down ; that was false ; he never was in the lazarette ; he did swear that rough weather prevailed all the time after leaving Cardenas ; that was false. Proceeding witness said, he belonged to Granville, the other side of the ferry ; about half a mile from the bridge ; he had not been home for ten years ; he could not swear that his parents were living and did not care if they were living or dead ; he was on his own hook now. Here the witness refused to answer a question, and His Honor threatened to commit him. The bridge is over the Digby River from Granville to Annapolis ; one end of the bridge is in Annapolis. He had not to leave home for some offence ; never did a wrong act in his life ; hesitated about answering as to where the bridge was, because he did not want his parents to know about this transaction.

To Mr. Thomson—He left home in 1869 ; his parents never took any interest in him since leaving home ; left home of his own accord, and without their knowledge ; went away because he wanted to see the world ; was well treated while at home.

To Juror Sancton—Witness said the bridge just referred to was between Annapolis Village and Granville Village.

[At this point no little commotion was caused in the court at the witness' positive assertion about the bridge, many of the spectators having personal knowledge of the locality and affirming that there was not now and never has been a bridge between the two villages.]

Juror Letteney said the nearest bridge to Annapolis was at Bridgetown 15 miles away.

Mr. Thomson had the floor, and said that he would ask for the commitment of the person who suggested Capt. Letteney as a juror, he having expressed an opinion about the trial before he became a juror. Mr. Thompson continued his re-examination of the witness, who said he told Mr. Cleveland that he had signed some paper in New York of which he did not know the contents. He also stated that he had told

Mr. Cleveland he was before the Consul, and that the captain told him (witness) what to say at these investigations. The false statements made at the Naval Court, witness said, were made to him by the captain. The protest was read over to him pretty rapidly.

To Juror Sancton—Witness said he was 15 years old when he left home, he lived then in Granville, N. S. It was in 1869 he left home.

To His Honor.—Witness applied to the Consul at New York for his wages before the Naval Court inquiry was held.. The Consul refused to pay him until after the inquiry was held.

To Mr. Thomson—Witness was before the Consul before making the protest to obtain his wages

C. E. L. JARVIS was called and sworn: He is agent for the Anchor Marine Insurance Company and as agent has been in the habit of issuing policies. He had heard of the barque Brothers' Pride and effected an insurance on her on or about the 22nd March, 1879, for the Anchor Marine Insurance Co., for the sum of \$1,500 for a voyage from Cienfuegos to the north of Hatteras.

Mr. Kerr objected to this evidence as irrelevant. He claimed that there was no charge of fraud in the allegation and his client knew nothing of the insurances. On the other hand Mr. Pugsley claimed that the evidence concerning insurances was admissable.

Mr. Thomson said he would show that the vessel was insured for at least \$21,000, and three times her value. He would show that the result of the scuttling act was to prejudice the insurance companies; that money had been near the hands of the captain for committing the act.

Mr. D. S. Kerr replied to Mr. Thomson. He most steadily, specifically and negatively would resist such arguments. His client was charged with a crime that demands liberty and even life, but it was unfair to double the charge. His client had a load upon him; was charged as a felon, his mouth was closed, the insurance companies against him, also an array of able counsel. His client was innocent yet, however, it must be remembered. He might be called a felon, but that must be proved. Mr. Kerr continued to argue, at considerable length, his objection to the insurances being admitted as evidence. "A lying tongue God hates, and yet," said Mr. Kerr, "Thomas, who is indicted as an accomplice, and has perjured himself on two occasions, is allowed to give evidence against my client."

Mr. Thomson said if there was any wheat in Mr. Kerr's argument it was surrounded by so much chaff that it was completely hidden from view.

Mr. Kerr said he knew the case was very objectionable to his learned friend, and he knew that gentleman would like to say, "old Kerr, you're a fool." He met a man who said that if it could be proved that old Mr. Palmer had written to the captain to scuttle the vessel, Mr. Palmer should be committed to the Lunatic Asylum. Continuing, Mr. Kerr said that Mr. Cleveland knew exactly the material he was dealing with when he took the depositions of the mate and second mate. It seems, added he, a dreadful thing that any man should have connexion with such individuals, who lie whenever the occasion suits them. He con-



tended that 'Thomas' evidence was worthless, and not to be relied upon. He referred to the case of Regina vs. Sparks, 1st Fos. and Fin. page 388, and added that Thomas should not have been allowed to give evidence before the Grand Jury, and if he could confirm this point the case then breaks down.

His Honor ruled the evidence admissable, when the court adjourned till morning, when Mr. C. E. L. Jarvis resumed the stand. He knew the Hon. Mr. Justice A. L. Palmer, (The application of one of the owners of the vessel for insurance on her was presented. It was referred to yesterday.) The application he never saw signed. He had seen Justice Palmer write, and believed the signature attached to the application to be Judge Palmer's.

To Mr. Kerr—He had seen Judge Palmer attach his signature to an application for fire insurance. Mr. Jarvis then stood aside and made room for

HERBERT PIKE who said he is in the Maritime Bank and was there in 1879. Mr. Pike then referred to his books to ascertain what exchange took place between the bank and Captain Tower.

Mr. Kerr objected to this evidence, and Mr. Thomson replied.

Mr. Kerr claimed the bill of exchange, the document itself, should be produced. It could not be proved by the means the prosecution proposed. The document was in the hands of somebody, even if in a foreign land. Mr. Kerr read Roscoe, page 13, to prove his assertion, and added, if the document itself could not be produced, a certified copy could.

The Chief Justice admitted the evidence, however, subject to the objection of Mr. Kerr, Mr. Pike referred to the books of the bank, and turned up to the 25th of June, in the collection bill book of 1879.

To Mr. Kerr—He was discount clerk in the bank at the time of the transaction. He could not say he ever had any transaction with Captain Tower or even seen him before to-day.

After some further preliminary examination of the witness by Mr. Kerr, the direct examination was continued. In reference to drafts for collection his duty is to enter in a book by whom drawn, on whom they are drawn, where payable, endorser on whose account, the date, the term, when due and amount. This he takes from original bill. The bill was drawn he recollected on some place in the West Indies. Looking at the book he found the drawers were in New York. It states the bill was sent to John J. Cisco & Co., New York, agents of the Maritime Bank, for collection. The book does not state that the money went to the credit of Captain Tower. The draft was never paid. The drawer was Louis J. Rodriguez. It was drawn on Louis Morey, jr., & Co., but who in favor of the book did not reveal. Witness took it on W. H. Tower's account. It was for \$3,738.31, dated June 17, 1879, and was to run 60 days. It never went to the credit of anybody. The draft came back to the bank and was handed to Captain Tower on the 22nd August, 1879. There was no deposit made of the money that he knew of. Witness said it was not his duty in June, 1879, to take deposit slips. It was either the duty of Wm. L. Busby or Daniel L. Waters to take deposit slips. At this point Mr. Kerr made another objection to the evidence and after some

argument brought Mr. Thomson to his feet. He spoke of satisfying a respectable jury of the prisoner's guilt.

Mr. Kerr—Do you infer that this jury is not respectable?

Mr. Thomson said he declared he never spoke of the respectability of the jury. He had nothing against the jurymen except one and he would deal with him hereafter.

His Honor asked Mr. Thomson to make no comments upon the jury.

Mr. Kerr then arose and defended the jury whom, he said, would consider well the testimony of the prosecution's rotten, perjured witness. The clerk then read the receipt from the book:—

No. 4643.

ST. JOHN, N. B., August 27, '79.

Received from the Maritime Bank L. J. Rodriguez's promissory note due June for \$3,738.31 lodged by me for collection. Charges \$1.33.

(Signed.)

WM. H. TOWER.

The witness then stood aside, with the understanding that he would be called again.

ALLISON WISHART was sworn and examined by Mr. Alward. He is in the collection department of the Bank of New Brunswick, and was there in 1879. It is his duty when Bills of Exchange are brought in to make a copy of the bill in his book, not an exact copy. It is his duty to enter the promisor, or drawer, endorser's amount, date of receipt and date due, where payable, and owner or holder. A bill of exchange put into witness' hand he identified as one he had entered in his book and received at the bank from Captain Tower. Mr. Lewin, the President of the bank, was present. The draft was offered after the signature had been proved, and read as follows:—

Exchange for \$3,000.

CARDENAS, Aug. 1, 1879.

Three days after sight of this first of exchange, second and third unpaid, pay to the order of Jose M. Reyes, Esq., three thousand dollars, value received, which place to account as advised by Y. O. S.

(Signed.)

MENDOZA & RABEL.

To Messrs. JULES SAZERAC & Co., New York.

Across the face of the bill was written: Accepted at New York, August, 13, 1879, payable at the Bank of America, August 19, 1879, for \$3,000. (Signed) Jules Sazerac & Co. The date of the stamp was August 19, 1879. It was also stamped paid at the Mechanics' Bank, New York, and over the stamp: Pay to the order of Tomoz C. Yannes, Esq., for value on account at Cardenas, August 1st, 1879. Again, was written on the back: J. M. Reyes pay to the order of Captain W. H. Tower for value on account at Cardenas, August 1, 1879. (Signed) Tomoz C. Yannes.

Then followed: Wm. H. Tower pay Mechanics' National Bank per order for account of Bank of New Brunswick. (Signed.) J. D. Lewin, President.

Witness referred to his books to ascertain what amount of this had been paid Captain Tower in one day. A deposit slip, drawn by witness, at request of Captain Tower, was produced. It was a deposit for the part proceeds of the above draft and for \$2,000. This was deposited on interest at 4 per cent. The slip was dated 23rd August, 1879.

GEO. A. SCHOFIELD then took the stand. He is one of the officers of



the Bank of New Brunswick. Witness produced an order from the Mechanics' Bank, which read as follows: Bank of N. B., pay to W. H. Tower \$3,000, credit ———, \$——, credit Mechanics' Bank, \$3,000. (Signed.) G. A. S. These were the accountant's initials. The order was endorsed by Captain Tower.

A deposit receipt of 23rd August was read :

Deposit Receipt.

Received from W. H. Tower the sum of \$3000, for which we are accountable, with interest at 4 per cent., on receiving four days' notice. Interest to cease at the expiration of notice, and no interest to be allowed unless the money remain in bank three months. (Signed.)

Bank of New Brunswick.

J. D. LEWIN, President.

W. GIRVAN, Cashier.

It was endorsed by W. H. Tower. Another deposit slip of a later date was for the amount of \$1,800. Another paper, a check in witness' hand, stated that there were \$1,831.16 drawn out in February, 1880. The sum of \$1,500 of this amount was deposited again in February, and on the same day it was drawn out in the name of Wm. H. and Mary A. Tower. The \$1,500 was drawn out on the 15th of March, 1880.

Mr. Thomson—Drawn just in time to pay your retaining fee, Mr. Kerr. Mr. Kerr replied that he had not as soft a thing as the counsel upon the other side.

Mr. Thomson called on the counsel for the defence to produce the charter party of the barque Brothers' Pride, of the voyages between Cardiff and Cienfuegos and New York.

Mr. John Kerr announced that the prisoner had not the charter party.

Monday morning Mr. C. E. L. Jarvis resumed his testimony, and said he held in his hand an application made by Mr. Palmer for advances.

Mr. Kerr objected and Mr. Thomson replied.

His Honor ruled that the statute mentioned three things for maritime insurances: the ship, the freight and goods. He therefore ruled the evidence out as the statute made no reference to insurance on advances. Witness then resumed his testimony. He knew Mr. Charles A. Palmer. Judge Palmer made an application for insurance on the Brothers' Pride. He could not swear the signature to the application was C. A. Palmer's handwriting. Mr. Jarvis stood aside and

Mr. JOHN WILLETT was put on the stand and proved the signature of Mr. Charles A. Palmer. He also testified to the writing in the body of another paper as that of Mr. Philip Palmer's. He could not say that Mr. Philip Palmer was in Cienfuegos in March last. The writing in the body of another paper he believed to be Judge Palmer's, though a portion of it was rather too plain in text.

Mr. Jarvis then resumed. He accepted an application from Mr. Palmer for insurance on a cargo of coal from Cardiff to Cienfuegos, and issued a policy on it.

Mr. Pugsley attempted to offer it in evidence, and handed it to the clerk to read. Mr. Kerr objected on the ground that the evidence was entirely irrelevant. His Honor examined the paper and said the policy covered to Cuba. Mr. Kerr corrected the learned judge; the policy was only to Cienfuegos.

The policy was withdrawn, and witness said he was agent for the Orient Mutual Insurance Co. of New York. On the 22nd of March, 1879, an application was made to him for insurance on the Brothers' Pride. The application was signed by Judge Palmer, and was first applied for verbally by Judge Palmer, and then Mr. Loughhead looked after it. The application was offered as evidence.

Mr. Kerr objected to the paper, that it was insurance on advances, and that the voyage was from Cienfuegos to N. of Hatteras.

Mr. Thomson argued that this paper and the other paper were both admissible. It was obvious that the insurance was upon the vessel, "the owner's interest," "the hull, etc.," as the document set forth.

Mr. Kerr replied, and asserted that there was not a particle of difference between this and the other paper that was shut out. It was, he said, for \$1,500 advances on the Brothers' Pride in the Orient Mutual Insurance Co. Advances, he said, are separate and distinct and not tributary either in general or particular average. It was, he thought, clearly rejectable. His Honor said the words "hull, etc.," did not alter the question, but he would not decide negatively at present, he would reserve the point. Witness continued: Judge Palmer notified him of the abandonment of the Brothers' Pride and had served him with notices to that effect. Mr. Pugsley offered these notices in evidence. His Honor would not, however, admit the evidence at present, saying he would rather have the policies. Witness continued: After notices were served preliminary proofs of the loss were submitted by Mr. Palmer. The proofs were identified by witness, and came separately, the first one came in the latter part of August, 1879. The other was received some weeks afterwards. After writing to Judge Palmer witness received the second proof. He (Mr. Jarvis) said he would like to amend his statement. The paper was not a preliminary proof; it was a subsequent proof. Witness continued: He then forwarded the papers to the Orient Mutual Co., New York. He did not know Capt. Tower's signature. Mr. Pugsley then offered the proofs in evidence.

Mr John Kerr objected to both papers on the grounds that they did not come under any of the counts of the indictment, and further that they related to insurance on advances, and therefore were entirely irrelevant, illegal. Mr. D. S. Kerr said the evidence was entirely foreign to the case. The papers he claimed were offered to waste time.

His Honor would not refuse them and would not accept them. He would reserve his decision for a little.

Mr. Pugsley then offered another batch of papers to witness to examine. He said one paper was the first part of the preliminary proof of the Orient's policy, another was a second, another a third, fourth, fifth and sixth. Two others he could not identify. The first paper was a letter dated August 7, 1879, written by Philip Palmer, relating to insurances in the Orient Co. The second was a letter dated Aug. 16, 1879, from Philip Palmer, relating to furnishing further proofs; the third was a letter dated the 28th Aug. 1879, from Philip Palmer to the Orient Company concerning further proofs that accompanied the letter. The sixth paper was the first preliminary proof received by witness. The papers were then offered in evidence. They all rela-



ted to the Orient Company and to the loss of the Brothers' Pride. Mr. John Kerr objected to the evidence. It was not written by master or owner, and did not come within the counts of the indictment, and was therefore irrelevant. The whole half day, Mr. Kerr claimed, had been exhausted in examining testimony entirely irrelevant to the case. Mr. Thomson replied, urging the admissibility of the evidence and claimed the defence was on the horns of a dilemma. Capt. Tower knew there were heavy insurances, upon the vessel, and insurances on advances he claimed were insurances upon the vessel.

Mr. D. S. Kerr responded, and claimed the insurances on advances were for disbursements, and thought it was extraordinary that such a paper should be submitted, it having been issued three months after the vessel was abandoned made it not receivable.

His Honor would receive the papers subject to objection. The court adjourned for dinner, after which Mr. C. E. L. Jarvis was recalled to the stand, but imparted no further testimony of apparent importance.

MR. ROBERT THOMSON, of the firm of Wm. Thomson & Sons was sworn. The firm, he said, were agents for the New England Mutual Insurance Co. Witness is one of the firm, and they have been agents of the company of which Mr. Geo. C. Lord was the president. Mr. Pugsley then offered a policy and witness identified the signature of the president of the company attached to the paper, which was a policy on the Brothers' Pride for \$2,000 insurance in the New England Mutual Co., dated 18th April, 1879, for a voyage from Cardenas to a port N. of Hatteras. The insurer was Chas. A. Palmer. The vessel was valued at \$16,000. Mr. Kerr objected that there was no proof of the existence or incorporation of the company, and that no notice of insurance had been made. Mr. Thomson and Mr. Pugsley claimed that the witness had just proved the existence of the company.

His Honor said if he received the evidence it would be with great hesitancy. Some proof of the company's incorporation should be shown. He would reserve the point for Mr. Kerr, however, and receive the evidence.

TREADWELL C. CLEVELAND was sworn. He is a counsellor-at-law and has been before the bar of New York for 14 years. He is legal adviser of the U. S. Lloyds.

Mr. Thomson—What is U. S. Lloyds? A.—It is an unincorporated—

Mr. Kerr objected to the question. The association should be proved by writings. The witness proceeded, however, and described what U. S. Lloyds is. It is, he said, the name of a body of one hundred individual underwriters who transact the business of marine insurance at their office, No. 50 Wall Street, New York City. He then produced a policy issued by that Association on the Brothers' Pride.

Mr. Kerr took objection. It had not been, he said, proved that the company is incorporated. Witness continued: He knows Messrs. Higgins & Cox, composed of A. Foster Higgins and James F. Cox; he knew as a fact that they act as agents for the Lloyds Association. The witness was then preliminarily examined by Mr. D. S. Kerr. He had never met all the individual underwriters together; he has never insured there himself; he has had frequent conversations with Higgins & Cox;

been acquainted with the Association for 14 years—7 years since and 7 previous to its re-organization

Mr. Kerr—Were you present at the re-organization of the Lloyds? A. —I cannot say yes or no without an explanation. I was, in a qualified sense.

“But in a true sense?” asked Mr. Kerr. Witness replied, “yes, in a true sense.” The association, he said, is changing and re-organizing all the time—members die, others fill their places. The insurance policy in Lloyds on the cargo was then submitted. It was a policy of \$38,000 upon the cargo of the Brothers’ Pride, which amount had been paid. Messrs. Higgins & Cox are agents, witness said, for the Lloyds, and issued the policy. He knows John Crosby Brown, who with Mr. Higgins, Mr. Cox, and Mr. H. Guion, are subscribers at the Lloyds. Witness also mentioned a number of other names who are subscribers to the Lloyds to his personal knowledge; he personally knows four-fifths of the underwriters. Higgins & Cox hold a power of attorney from every one of the underwriters.

Mr. Kerr held these powers of attorney should be produced; without them the policy should not be received.

His Honor would receive it, however, and reserve the point for Mr. Kerr. The policy was then read. It was dated 28th April, 1879, was for \$38,000 in favor of R. Acosta, New York, and on a cargo of 863 casks of melado, shipped in the Brothers’ Pride at Cardenas, in May, 1879, to be carried to New York. The premium was read as  $1\frac{1}{4}$  p. c., or \$475.

Mr. Kerr pointed out that the only evidence on which this policy has been admitted is on the statement of the witness and accomplice, Thomas, who said the Captain told him he had received a letter from old Mr. Palmer to scuttle the vessel that she was well insured. Mr. Thomson said that the bill of exchange on Rabel and Mendoza had also to do with it. Witness then continued, and produced the check given as payment for the \$38,000. It was signed Higgins & Cox. Mr. Kerr objected to the check being admitted as evidence. During the discussion Mr. Cleveland handed Mr. Thomson a paper from the witness-box. Mr. Kerr told Mr. Cleveland that he must remember that he was in a British Court, and must not hand papers from the stand of his own free will. Mr. Kerr said it was in January, 1879, when the alleged conversation about old Mr. Palmer occurred between Thomas, the accomplice, and the prisoner. This was some months previous, he said, to the issuing of \$38,000 policy, and consequently, he claimed, had no reference to the alleged conversation, which is intended, he said, to support this evidence. The check should not, he argued, be admitted. Witness continued, after His Honor had overruled Mr. Kerr’s objection: The check was part preliminary proof of the payment of the \$38,000. A question of comparison of signature then arose, Mr. Thomson having attempted a comparison of J. M. Reyes’ signature to prove that the cargo was shipped. Mr. Kerr objected, and claimed that no standard in this particular had been established, and that the genuineness of the signature being doubtful, it could not be admitted as testimony. The comparison could not, he held, possibly stand.



Mr. Thomson replied, and said it had been proved that bills of exchange passed through Captain Tower's hands for nearly \$7,000, and that in all he had received nearly \$14,000 for the act he is charged with. On this ground he held that the cargo policy was admissible as evidence.

His Honor would receive it subject to Mr. Kerr's objection.

Mr. Kerr wanted an expert chosen to compare the signatures. After some further discussion Mr. Cleveland attested as an expert to the genuineness of the comparison of J. M. Reyes' signatures. Another document—an invoice and affidavit of J. M. Reyes', to the effect that the cargo was shipped—was offered as evidence, Mr. Thomson claiming that the invoice was preliminary proof of the issuing of the policy.

Mr. Kerr objected to the admission of the document. It had no relation to the case and did not help it a bit.

His Honor said he had a good deal of doubt about receiving the preliminary proof, piece meal, in this way. He asked if there was nothing more to follow? Witness produced a certified copy of the protest. The bill of lading had already been submitted. The protest was then put in as evidence. His Honor said as there was no evidence of Captain Tower's knowing anything about the insurance on the cargo, he had considerable doubt about receiving these documents as evidence. He would take it, however, subject to Mr. Kerr's objection, and with much reluctance himself. The check for the \$38,000 he would receive, not wishing to shut out anything that had any relation to the case, though in receiving it he would reserve the point for Mr. Kerr. The check was read: New York, June 14, 1879. No. 4,342. National Bank of the Republic, pay to the order of R. Acosta, \$37,940.89. (Signed.) Higgins & Cox.

The court adjourned until Monday when Mr. Cleveland resumed the stand and produced a policy issued by the Universal Marine Ins. Co. of London. The policy was handed to prisoner's counsel for examination, and was on the Brothers' Pride for a voyage from Cardiff to a port of discharge in the United States. Witness received the policy from the Universal Marine Ins. Co. of London, forwarded at his request, he having made application for it. On this identification of the policy Mr. Thomson offered it in evidence, the court, he said, not having power to issue subpoenas outside of Canada and therefore it was impossible to force the officers of the Universal Marine to come to St. John. Mr. John Kerr took objection in that Captain Tower was a stranger to the transaction set forth in the policy, the company not being described in the indictment. A paper of the kind could not be put in a Civil Court, much less in a Criminal Court. The policy was submitted, he held, without any proof, and was therefore wholly inadmissible. Mr. Thomson claimed that the policy did come within a count of the indictment.

His Honor said he could not receive it as it had not been proved.

Mr. Thomson then further attempted to prove the policy through Mr. Cleveland, who recognized the signature of Mr. A. Toser, secretary of the Universal Marine, attached to the policy. He also knew by correspondence the existence of the company. Correspondence between Mr. Toser and Mr. Cleveland was then produced.

Mr. Kerr preliminarily examined the witness who did not know all the officers subscribed in the policy personally and has no commission to prove the policy.

Mr. Kerr again objected to the policy being admitted.

His Honor said that there was no evidence of the existence of the company. The policy was then withdrawn. [It was one for £500 stg. on the vessel and in favor of the owners.] Mr. Cleveland then produced a policy issued Dec. 18, 1878, on the Brothers' Pride, by English Lloyds, for the amount of £150, and for a voyage from Cardiff to Cardenas, thence to a port of discharge in the United States. He only recognized the policy by its general form. Mr. Thomson then offered this policy in evidence, and with it two others of the same nature. One of the latter was dated 24 Dec., 1878, for £300; voyage from Cardiff to Cienfuegos, thence to America; upon the Brothers' Pride's hull and materials, she being valued at £4,000. The other was for £300 stg., dated Dec., 1878, on vessel and materials, valued at £4,500 stg.; voyage from Cardiff to Cienfuegos, thence to a port of discharge in the United States. Still another was offered, as issued on the 25th April, 1879, by English Lloyds for £300 stg., on chartered freight valued at £1,000 stg., for voyage from Cienfuegos to Cardenas, thence to port of discharge in the United States. The four Lloyds' policies were then offered as evidence. Mr. Kerr objected, there being no proof of the policies whatever.

His Honor would like to see Lloyds' Act in reference to the policies.

Mr. Kerr—There is no Act to compel these papers being received without evidence. Such an Act anyhow had no application to this country.

His Honor said he would determine for himself after seeing the Act. The policies were laid aside for the present. Witness then produced a proof of a policy of the Great Western Co. of New York. The policy itself, witness said, was in the hands of the owners. He produced an application for the said policy; knows the company of which Ferdinand Mose was president and Alex. McKay was vice-president in January, 1879. The company is, he said, in active business in New York. The application was then offered as preliminary proof of the policy. Mr. Kerr objected to the paper, it having no connexion with the defendant or Mr. Palmer whatever.

His Honor said he would receive the evidence as it proved to be insurance on the vessel. Mr. Kerr argued against His Honor's decision, but failed to alter the position. The clerk read the application which was made by P. I. Nevius & Co., in January, 1879, for \$3,000 on the vessel valued at \$16,000, in favor of C. A. Palmer, for a voyage from Cardiff to Cienfuegos to a port in the United States. An application for a policy issued by the same company to the same parties for the same voyage, dated January 18, 1879, for \$2,000, was also submitted as evidence by Mr. Thomson through witness.

Mr. Kerr cross-examined the witness on points connected with the application. Witness said it was not necessary to have a policy; the application, when accepted, was a sufficient substitute.

Mr. Kerr—Do you say that an application is as obligatory and complete as the policy itself? Answer me sir, no hedging if you please.

Mr. Thomson appealed to the court to call Mr. Kerr to order.

His Honor could not see that Mr. Kerr was out of order. The witness proceeded: The company cannot legally refuse to issue a policy under the application; they could physically but not morally or legally.



Mr. Kerr claimed that the word "application" was not mentioned in the allegation.

His Honor accepted the evidence subject to Mr. Kerr's objection. Mr. Thomson then offered proof of another policy issued by the Great Western on the freight of the vessel, in March 24, 1879, for \$5,000 for a voyage from Cuba to a port in the United States at  $1\frac{1}{2}$  per cent. premium. Mr. Kerr objected on the grounds previously mentioned.

His Honor would receive the evidence though not sure that it was evidence in the case. He reserved the point for Mr. Kerr. The clerk then read the document which was in substance as above. Witness then produced a policy issued by the Insurance Company of North America, and recognized the signature of Mr. Pratt, president, attached to the policy. The company, he said, was incorporated.

Mr. Kerr then made a preliminary cross-examination of the witness in reference to the policy. The original seal of the company he never saw. Mr. Kerr objected to the evidence.

His Honor said he could not receive the policy until the counter signature of Mr. Ranney was identified. After some further argument, however, the policy, issued in favor of A. L. Palmer for \$2,000 on the freight of the vessel, dated March 22, 1879, premium \$40, was received, subject to Mr. Kerr's objection. The witness then produced another policy, received from Allen H. Broderick, Liverpool. It purported to be for £500 stg., issued by the London Provincial Universal Marine Ins. Co., on the hull and materials of the Brothers' Pride, and was dated Dec. 18, 1879. The policy was not received as evidence for want of proof. Mr. Thomson then offered two other policies in the Home and Colonial Marine Insurance Co. of London. The first was dated Jan. 9th, 1879, for £400 stg., on hull and materials of the vessel; the second, dated 9th Jan. 1879, amount withheld. Another was by the Merchants' Marine Co. of London, dated 31st Dec., 1878, amount not stated. All these policies were offered as evidence, but rejected on the same grounds as the other policies—for want of proof. Another policy, issued by the Thames and Mersey Marine Insurance Co., dated Jan. 2nd, 1879, on the vessel, was submitted. In connexion with this the application for the policy and receipt for the payment of the money were produced, but the whole was rejected on the ground of insufficient proof. The Thames & Mersey policy purported to be for £500 stg. on the hull and materials of the vessel and in favor of the owners. The Merchants' Marine policy purported to be for £150 stg. on hull, &c., and in favor of the owners.

The court then adjourned for dinner, after which Mr. Cleveland resumed the stand. A receipt from Ricardo Acosta for the \$38,000 insurance (minus the premium) in the U. S. Lloyds was offered and accepted as evidence, subject to the objection of Mr. Kerr. Witness continued: He has been in court since the commencement of the trial. The arrangement with Thomas and Roberts, who were the first ones he saw of the crew of the Brothers' Pride, was that they should receive the same wages as received on last vessel they were employed in. Roberts, sometime in January, having an opportunity to go as captain of a vessel at \$50 a month, witness agreed to give him equivalent pay; also agreed to pay their travelling expenses. Hall, the steward, he saw on the 23rd Feb-

ruary, 1880. The agreement with him was that he should receive the same wages that he received on board the Nippon; also his board and travelling expenses. With Trisinski, he agreed to pay the same rate of wages that he was receiving at the Hoboken docks—the amount of his board not to exceed \$4 per week. This is all the arrangement he had with Trisinski. The Spaniard, Melien, he agreed to pay the sum of \$30 a month and board. This agreement entered into effect on the 26th of March, 1880. Witness denied that he had examined and coached these witnesses.

Mr. Thomson—Mr. Kerr said you cocked and primed these witnesses.

Mr. Kerr—I never heard and never said the words. “Cocked and primed, pooh!” Witness continued: He never told them what to say and never drilled them in any way; visited Thomas a number of times in jail when Clark, the turnkey, was present; endeavored to secure Thomas a room to himself in jail and a fire; also took him some papers and tobacco and had a young lady admitted to Thomas’ presence who wished to see him; saw Thomas on the 26th of February last for 30 minutes; also on the 29th (Sunday), when he questioned him on a branch of this case which has not yet been developed in evidence, and which witness understood would be evidence for the defendant; saw him on the 11th of March in jail, and had conversation with him. On Saturday, the day after the indictment was found, he saw Thomas in jail and conversed with him; has not seen Thomas in jail since and never asked Thomas, directly or indirectly, to manufacture evidence for this case. (Witness wanted to state the first conversation he had with Thomas, but the court would not allow it.) He had no knowledge of the existence of the log book before Roberts stated so in the witness box, and denied telegraphing across the table with Roberts or with Thomas during this trial; he had felt indignation at the imputation. Mr. Thomson called for the charter party of the Brothers’ Pride. The counsel for the defence said they could not produce it because it was in the West Indies.

Mr. D. S. Kerr then commenced the cross-examination of the witness who said, there is a paper called the *Maritime Register*, published in New York; did not see an account of the loss of the Brothers’ Pride in it; recollected an application being made for the postponement of the present trial and made an affidavit against the postponement. In common parlance he was uneasy about the trial being postponed. He never was in Cardenas and did not know Jerry Spline; first heard of the protest in July; got a copy of it from Walker & Hughes, average adjusters. Mr. Cox, of Higgins & Cox, is a brother-in-law of witness’. He was not present at the Naval Court inquiry and never heard of the inquiry until after it had been held. The Naval Court proceedings came before witness in July last; he obtained copies of the Naval Court and protest inquiries.

Mr. Kerr—Witness you are interested in this case; now who are you acting for? Witness replied that he was at present simply a witness in the case.

Mr. Kerr—But who are you acting for, just tell us now? A. I represent the U. S. Lloyds, the Great Western Insurance Co. and the Orient Insurance Co. There is not \$50,000 (he said) deposited to run the case with. He is paying Tracey C. Roberts \$50 a month and \$5 a week for



the purpose of having him remain on shore to give evidence in the case. It cost about \$30 to take Roberts to New York and return here; did not pay this money to Roberts—paid it as expenses himself; is paying Thomas \$25 per month and his board, \$5 per week; took Thomas, when in jail, some oranges. Thomas boarded with Mr. Rankin in jail for a little over a week, for which witness paid \$6.25, and if additional charge for coal he would pay for it; has paid Hall \$35 a month since January last; telegraphed to Yokohama for Hall. He is paying Trisinski \$1.50 per day and his board.

Mr. Kerr—What retainer have you paid Mr. Thomson? A. Well, I don't know that I have a right to answer that.

This brought Mr. Thomson to his feet, and he, protesting against such questions, requested His Honor to reject the evidence.

His Honor could not see that it was requisite to ask such a question. It was unusual.

Mr. Kerr—It is an unusual case; I want to know who is the prosecution in this case. Mr. Kerr said he understood that the insurance companies have laid out large sums of money in the case. He also wanted to know Mr. Alward's fee. Mr. Pugsley he knew nothing about.

His Honor said he would reject the evidence if Mr. Thomson wished. Mr. Thomson replied he did.

Mr. Kerr—Well, ah, witness, what are *you* getting?

Mr. Thomson rose to protect Mr. Cleveland. His Honor said he was not prepared to reject that question.

Mr. Kerr—Will you receive \$100,000 if you succeed? A. My services will be compensated, no matter how the case goes.

Mr. Kerr—Don't be angry. A. Oh, I am amused.

Mr. Kerr—Who employed Mr. Thomson? Witness did not reply, His Honor deciding against the question at the request of Mr. Thomson. The Judge also refused to allow it being stated in evidence who employed Mr. Alward.

Mr. Thomson then re-examined Mr. Cleveland, who denied most emphatically that \$50,000 is deposited in one of the banks to assist the case.

Mr. Thomson—In consequence of the finding in the Naval Court proceedings against Captain Tower, did you not take measures to commence this case? Witness said, in consequence of the finding, a special agent was sent to Cuba, and witness himself came here. A thorough investigation of the facts was then made by witness; wrote to England and received the policies produced yesterday morning; to Boston, and received the New England Mutual Policy; consulted the Secretary of State for the United States concerning the testimony of Captain Tower; visited the District Attorney for New York, Mr. Fearo; consulted with the Anchor Marine Insurance Co., and wrote to Tracey C. Roberts in Ireland; consulted twice with the Attorney General and Solicitor General of this Province and then opened up these proceedings. On the return of the special agent from Cardenas he sent him back again to Cardenas to procure Melien. He also, through Vroom & Arnold, secured Thomas, and employed persons in Boston to obtain, if possible, Spline, one of the crew; ascertained that Hahan was in Hamburg; has obtained all of the crew that he could find, to give evidence in the case.

Mr. Pugsley then called upon the defence to produce certain policies of insurances. He had served Mr. Charles A. Palmer with a subpoena to produce several policies. Mr. Kerr thought the issuing of such a subpoena was very extraordinary and unreasonable.

His Honor said that if Mr. Palmer had only been notified to produce at 2 p. m. he might be accorded more time. The matter was then laid aside until the morning. Mr. Pugsley then called the Spaniard,

DON JUAN MELIEN, who stood to be sworn. Mr. Joseph Priest was offered by the Crown as interpreter for the witness, but was objected to by Mr. Kerr. His Honor said he could not choose an interpreter. Mr. Kerr named Joseph Ganallo as interpreter, in fact he would ask that both Mr. Priest and Mr. Ganallo be sworn—one to watch the other. Mr. Henry Jack, Spanish Consul for this port, was called and asked if he could name an indifferent and capable party. Mr. Jack could not name any other than Ganallo. Mr. Kerr objected to Mr. Priest as an extreme partizan.

His Honor said that did not disqualify Priest—whom he would have to accept. Mr. Priest was then sworn as interpreter, Mr. Ganallo taking a seat near prisoner's counsel and watching the interpretation. The oath was put to the witness through Mr. Priest and witness was examined by Mr. Alward. Here Mr. Ganallo said, through Mr. Kerr, that the Spanish spoken by Mr. Priest was incorrect. After some discussion, however, about the matter, the witness was sworn and his testimony proceeded. He said he was born in the Canary Islands, and lives in Cardenas, Cuba—had lived there since 1871; he can read and write a little and had his passport from Cuba with him. [Passport produced and examined by Ganallo for prisoner's counsel.] He knows Captain Tower as the captain of the barque that he stowed in Cardenas last year; knows a party in Cardenas named Thomas C. Yannes, and has known him since the year he arrived in Cardenas; Yannes conducts a coffee saloon, billiard saloon, with two tables, and a ninepin alley, and gives balls on Saturday nights in the second story of his establishment; has also an ice-house and receives cargoes of ice from the North, and has many classes of business outside of these mentioned; also a great deal of business with captains of vessels. He knows of two ship chandlery stores near the wharf in Cardenas; the stores are open on Sundays; fruit is sold in the ship chandlers stores, and on Sundays; the ship chandlery stores are one square distant from the wharves and back of the molasses storehouses; Yannes' billiard rooms and a ship chandlery store are on opposite corners; the other store is in the middle of the block. An unloaded vessel can come close to the wharf at Cardenas, and some docks will accommodate a vessel drawing 12 ft. The bed of the harbor at Cardenas is muddy and the bar in the harbor is, perhaps, nine miles from the wharf. Pilots are required to take vessels out of the harbor; knows what melado is; he worked aboard Captain Tower's vessel which was loaded with dirty water; did not recollect the name of the vessel; she was known at Cardenas as the water barque; this is what the stevedores called her; he distinguishes English vessels from others by the rigging and by the captain, crew or some peculiarity of the vessel.

Mr. Kerr then arose to take objection to the evidence. He pointed



out that it was easy to drill a witness and that it was as easy to manufacture a story and six o'clock having arrived the court adjourned until morning when Don Juan Melien continued his evidence and corroborated Mr. Beste's testimony regarding melado, in point of manufacture, material; sun heat effect, etc. The seven specimens were shown witness. Nos. 3 and 4 were melado of a good class, also Nos. 5 and 6. No. 7 specimen is used to make rum of in Cuba, and is also shipped north, for what purpose he could not say. Molasses cargoes are shipped by the casks being embarked empty and then filled by a hose from the warehouse. Melado, never loaded in this way, is sold by weight and not by measure. Molasses is sold by measure, and perhaps weighs much less than melado. A cask of melado will sink in the water in a minute. Witness recognized the mate of the Brothers' Pride. The captain, who he pointed out sitting in the prisoner's dock in court, had, when he saw him in Cardenas, long side whiskers. [The captain appears now clean shaven.] Witness remembered the cook, Hall, having had conversations with him, and because he was the only one who spoke Spanish on board. He also recognized Trisinski as one of the Brothers' Pride crew. Witness worked aboard the vessel seven consecutive days. The stevedores or shoremen were five all told. Many of the casks leaked, some more than others. He did not sample the drippings. The material had a pestiferous smell, a color little darker than beer, and like that produced by sugar and water. Some of the casks which burst contained dirty water, not melado. It would run as freely as water. The lighter that brought out the cargo belonged to the house of Muro and was painted red. One could wash his hands in the substance in the casks but it would not clean them any. The casks were not as heavy to handle as melado. Pilots will never take vessels out of Cardenas harbor drawing over 14 ft.; the tide rises in the harbor about 2 ft.; the bar is soft mud into which the keel of a vessel would cut a foot; the water in the harbor is clear in calm weather, when the bottom of the harbor can be seen; the harbor is 16, 17 and 18 ft. deep in places. Aft the casks were stowed in the hold in tiers rolled up on each other by skids; the second tier was stowed fore and aft, leaving considerable space near the bow; generally the cargo was stowed according to the build of the ship; cargo was stowed as closely as possible; generally took no care how they stowed the cargo, for they comprehended what it contained. (The latter part of this sentence was ruled out.) Melado is lowered into the holds of vessels with ropes, because the casks are very heavy; had ropes ready for use but did not use them.

The court then adjourned for dinner, after which the Spaniard resumed his testimony. Melado casks, he said, are generally numbered and their weight marked on them; the name of the estate from which they came is also marked on the cask; did not see any numbers or figures on the casks that comprised the Brothers' Pride cargo. There was lime on the heads of some of the casks, one of which got broken, the contents running out, leaving no substance in the cask. There is a bar-room in Thomas C. Yannes' place in Cardenas; the bar-room fronts on the public street, and the billiard room is in the rear. There was stone ballast in the barque when he helped load her, some in the

centre of the vessel and some aft; lower tier of casks was stowed flush up aft; the second and third tiers were distant from 2 to  $2\frac{1}{2}$  Spanish yards from the stern post. He has heard of a firm at Cardenas named Seinze & Co. There is, he believes, a man named Lorenzo Rodriguez, in Cardenas, and lighters belonging to him, are still in existence. Rodriguez dealt in melado.

Cross-examined by Mr. Kerr: He did not see the vessel aground. Many of the Cays are of coral formation. There are many rocks inside the harbor, but none in the course of vessels; rocks are on the coast and on the north-west shore of the harbor; could not say how deep the water was near the rocks. A vessel in sailing out the harbor could tack within two miles of the rocks. Witness is not a diver, and never examined the bottom of the harbor; could not swear what is under the mud on the bar. The mud is about a Spanish yard deep. He has helped place beacons on the bars; is not and has never been a pilot, and could not say the Brothers' Pride had a pilot when leaving the harbor. The head stevedore's name was Trillai Jerome; did not know Jerome's name to be Jerry or Yerry. Once in a while Jerome came on board. Claudio was the foreman, and the cargo was loaded according to Claudio's directions.

Mr. Kerr—Did you do your duty in stowing the vessel? A.—I did what my employer told me.

Mr. Kerr—to interpreter—Ask witness if his employer told him to commit murder would he do it. I want to have a drive at his morals, added Mr. Kerr.

The Chief Justice said there was a vast difference between scuttling a vessel and murdering a man, and over-ruled the question. Witness continued: If he broke any casks he was ordered to do it; he damaged several of the casks and let the water run out, but no one on board knew this but themselves (the stevedores); could not say that the foreman knew he broke the casks, and could not say how many he broke; broke one purposely, and recollects putting the crowbar through two others and the contents run out. There were more broken by others among the stevedores. The hold was all filled save the spaces forward and aft. The empty space forward was about  $2\frac{1}{2}$  Spanish yards or *yarras* in length. A Spanish yard is 33 in. There were not four tiers in the lower hold bow; lower tier was stowed as closely as possible to the stern; the second tier was placed the same as the first tier; third tier stowed athwart-ship's and fore and aft; cargo was well stowed. Casks were placed athwart-ship's just aft the pump. Witness was with Mr. Priest, the interpreter, at Hotel Dufferin, Tuesday night, but did not see Mr. Cleveland there and had no conversation with Mr. Cleveland there. Witness boards at same hotel with interpreter. He did not know Washington & Co., Cardenas; knows a young man named Washington; could not say if his name is Frank; the man he knows is slim and tall.

Re-examined by Mr. Thomson—Mr. Washington, of Washington & Co., was American Consul at Cardenas a short time ago. The consulate has been changed since. There is a space of a quarter of a yard always left in the stern.



Juror Hegan—Is there room left generally for a man to get into?  
A.—There generally is.

Juror Dixon—Was there any space in the wing or skin of the vessel? Witness said there was, explaining locality of wing on a miniature barque. There was always a space in the wing of the ship after stowing as close as possible—a space that would contain several men.

JOHN W. TRISINSKI, one of the crew of the alleged scuttled vessel was called. Mr. Alward examined the witness who said, he is a Russian, and was born on the River Riga, is 42 years old, and lives in Hoboken, New Jersey; has been a sailor since 1875; knows the prisoner; saw him first in Cardiff, where he joined the Brothers' Pride in January, 1879. He described the voyage from Cardiff to Cienfuegos, and the intimacy between the prisoner and Thomas, the alleged accomplice, the statements corroborating those of the mate and second mate. On the voyage from Cardiff witness, Charley and Jerry Spline were put in irons for refusing to obey the mate's orders; witness remained in irons for seven days; the others were released in a few hours. He was not on shore while the vessel was lying at Cardenas; the captain was ashore nearly every day, and Thomas and Charley Lutz usually went with him. The lazarette was as wide as the ship was aft the bulk head of the captain's cabin; a man could not stand up in the lazarette; the hatch that lead to the lower hold from the lazarette was on the starboard side, a little nearer 'midships; bread, paint, oil and ship tools were kept in the lazarette. The hatch or hole in the forecabin was on the port side. He was never in the cabin; could not locate, to a demonstration, the positions or relative positions of the air-streaks; saw the stevedore, Melien, on board the vessel at Cardenas. The casks, which comprised the cargo taken in at Cardenas, were transported from the shore to the vessel in lighters, which were painted red; he assisted to transfer the casks from the lighters to the vessel, by heaving on the winch and attending the lever; some of the casks leaked; the head came out of one cask; it was thin, brown water like stuff that dripped from the casks; the stuff had a peculiar smell; he saw melado several years ago; he has been ashore at Cienfuegos and saw melado which was thick, lumpish stuff. Witness then examined the specimens shown to other witnesses, and said 3, 4 and 5 specimens were like that which he saw in Cienfuegos. The material that flowed from the broken cask was like wash water; put some of the stuff in his tea and it spoiled his tea. The second mate, he said, bored a hole in a cask and caught some in a bucket, afterwards throwing it on the skids to make them run easy. Witness handled one hundred of the casks and helped to stow some between decks. Aft, the casks were not stowed as closely together and level as amidships, but there were two or three placed athwart ships. He could crawl between the casks and main deck aft; there was not space on top for another cask; some casks were heavier than others. It was Friday, the 2nd of May, 1879, that she left the harbor, Cardenas, to go outside to the cays; vessel was in charge of a pilot and grounded, pulling up slowly; wind was not heavy; captain went ashore on Friday night with the pilot and Thomas, the second mate, and returned on Sunday night; they sailed the following Monday with a pilot. On the Friday previous the vessel was pumped and that "thin

brown water" came out of her. Monday, Monday night and Tuesday were fine, the weather continuing so until he left the ship. On Tuesday the port pump was broken. At 3.30 p. m. on Tuesday, witness at the wheel, heard sounds of breaking boards below; captain and Thomas were below; shortly afterwards heard a sound like boring holes; the captain came out of the after part of the cabin on deck and looked red in the face and appeared to be perspiring; captain told the mate to sound the pumps; mate obeyed. The second mate was down below. Witness was on the pumps at midnight on Tuesday, and saw the captain throwing some papers overboard. After getting the boats out, the crew took a spell on the pumps; but the water came in so fast that they soon ceased; crew then got into the boats, witness and William throwing their trunks overboard, thinking some needy fellow would pick them up; witness was in the mate's boats; the second mate was in the captain's boat. Witness then verified Thomas' and Roberts' statements relating to the firing of the vessel, and after she was nearly burned down they went in search of land. In rowing around the vessel he saw four or five auger holes in the starboard bow port; the water flowed from the holes when the vessel would rise. They got ashore on Thursday night, May 8th. The log book was saved; he saw it exposed to dry on the beach at Florida; Jerry tore a leaf out of the log book and made a hole in the sand and buried it because the leaf contained reference to witness' imprisonment in irons on board the vessel.

The court then adjourned for dinner, after which Trisinski resumed the stand. He went over the ground from the time he landed on the Florida coast until he arrived in New York, giving an account of the journey similar to that of Roberts, Thomas and Hall. He saw the captain at the Consul General's the next day after arriving in New York. Witness understood an inquiry was to be held, and Captain Tower told witness to say it was blowing hard and that the vessel sank. The captain wanted witness and William Hahan to sign a paper and receive his wages; witness wouldn't swear, he would rather lose his wages; captain said he did not want an oath taken, merely wanted him to sign a paper; witness then went to sign the paper and found a book lying on a table and a gentleman pointed out the place to witness and William to sign. There was nothing read over to him when he signed the paper. William, who could not speak English, he thought, also signed. He did not swear because the story of the firing and burning was kept back; he told the captain this, and the captain said to him: "You fool, don't be foolish." This occurred outside the Consul's office. Witness and William always went together, and after getting his money witness went over to Hoboken to his home, remaining there until he came to St. John with Mr. Cleveland. Witness has had conversation with several in St. John about this case.

Cross-examined by Mr. John Kerr—Witness said he had had conversation with Mr. Alward and Mr. Cleveland; conversed with Mr. Alward on Wednesday night about his evidence and about the starboard lights, but how long he could not say. Mr. Alward did not tell him how the stevedore stowed the cargo. He was in irons about seven days. The vessel made considerable water on the Cardiff voyage. When he was in



irons the captain came to him and said : " How you like it ? " Witness replied that he did not like it at all, but would go to work if the captain did not enter the fact of his being put in irons in the log. There was a cask open on deck about three days. He did not think he told the big stout man at the police office [H. T. Gilbert, Esq.] that he took the material for sweetening his tea out of the open cask on deck ; did not think he made that mistake ; could not remember how many feet of water were in the hold on Tuesday night ; vessel was down to the channel plate bolts in the water. When they left the vessel a number of sails were set. The vessel's side lights were broken when at Cardenas ; the lights were green and red, two of each. There was no slush barrel on board. He could not recognize Mr. Hughes, the notary. [Mr. Hughes came forward.] He never took an oath before Mr. Hughes, nor did that gentleman read a paper over to him ; positively never swore to any statement before Mr. Hughes ; no person read a paper over to witness. [Book of protests produced, and a signature purporting to be witness' shown to witness.] Witness did not remember signing the protest. His name was attached to the protest. He signed his name in one place, he remembered. Another signature was not Charley Lutz's (one of the crew). Lutz could not write so well as that. Witness did not swear to the paper before or after he signed it.

Mr. John Kerr said he wanted it understood that Mr. Alward had " drilled " the witness and " drilled " him thoroughly. Mr. Alward said the expression was a most ungenerous one, and most unprofessional. Mr. Kerr retracted and apologized to Mr. Alward for using the word drilled. Witness continued : It rained, thundered and lightened the night after he left the ship. He is stopping at the Park Hotel ; can read German, not English. Mr. Alward read the testimony of the witness at the the Police Court over to him. Mr. Kerr then read the protest over to witness, sentence by sentence, and witness said some of the statements in the protest were true and others false. About " blowing a heavy gale and a heavy cross sea," witness said there was no such thing.

Re-examined by Mr. Thomson—Was told by Mr. Alward to tell the truth at all hazards. The name of Charley Lutz, attached to the protest was not Charley's own hand-writing. When he heard a sound like boring it reminded him of a conversation he heard at Cardenas about the vessel never reaching any port after sailing. Mr. Kerr objected to this statement, and His Honor concurring with Mr. Kerr, ruled the statement out as being suspicions of witness. On Tuesday afternoon the vessel had all sails set—"and in this wonderful gale," added Mr. Thomson. The witness continuing said the vessel made but little headway. Charley Lutz could not speak English, but William Hahan spoke a little. Henry Caspin, the Russian Fin, also one of the crew, could not speak a word of English. The court adjourned until morning when Mr. Thomson called on Mr. C. A. Palmer to produce certain policies of insurance on the Brothers' Pride. Mr. Palmer replied that he had not the policies in his possession. Mr. Thomson said he would have to serve a subpoena on Judge Palmer ; the policies must be produced.

JOHN STEWART was then sworn. He has been a shipbuilder since

1840, and resides in St. John; could not state the value of a barque in 1879, 13 years old, of 442 tons in ordinary good repair, yellow metaled in 1876. He sold 1-16th of the barque Edina, 566 tons, for \$700 when she was 9 years old; one-eighth of the Brothers' Pride he would value at \$500. On being cross-examined by Mr. D. S. Kerr he said: Butts in vessels are started oftener, he thought, by timber cargoes; casks, he thought, would not be so hard on a vessel. The iron in the hull of a vessel would probably decay in 13 years, but this would not necessarily open her seams. A vessel retopped, sealed with pitch pine, and strengthening timbers added to her frame in 1879 if the work was done in 1876, would add to her value perhaps \$2 per ton.

Re-examined by Mr. Thomson—He could not say that a vessel 13 years old, 442 tons, would not be worth \$8000; would not give that amount for her.

ALFRED C. RAY, cashier of the Maritime Bank, was sworn. He knows the prisoner who brought a bill of exchange to the bank, giving it to Mr. Shepherd. This clerk is not in the bank now, he has left the country altogether. Witness had a conversation with Capt. Tower about the protest of the non-acceptance of a certain bill of exchange. He told the captain he presumed he had received notice of the protest and requested him to pay the bank \$738.31, which the accountant had on the 25th June, 1879, allowed the captain privilege of over-checking on and upon the strength of the bill of exchange. The captain re-paid the money on the 2nd July, 1879. It was a bill drawn by Louis J. Rodriguez of Cardenas, on Louis Monjo, Jr. & Co., of New York, for \$3,738.31 and endorsed by and payable to the order of Capt. W. H. Tower, and dated June 29, 1879, payable at sight. This was the bill the accountant made the advance of \$738.31 upon. The advance was paid back by a check, on the 2nd July, 1879, and the balance in cash. The check was signed by M. A. Tower. Witness wrote the check himself, and Mrs. Tower signed it. Witness was then requested to refer to Mrs. Tower's account, but he had not the necessary books, and a messenger was despatched for them. Meanwhile

ALEX. LOCKHART was called and sworn. He has been engaged in shipping for some years. Vessel property touched its lowest value between December, 1878, and June, 1879. A vessel built in 1866, of 442 tons, would hardly bring \$8,000 in May, 1879. \$10,000 would be a large price for such a vessel.

CAPT. JOHN SMITH was next called and sworn and examined by Mr. Alward. Witness said he has followed the sea about 15 years, and made about 30 voyages to the West Indies; has carried about six cargoes of sugar and molasses from Cardenas. This port is an open bay surrounded to the northward by cays or small islands. Witness then described the harbor on the chart and afterwards stood aside and

MR. RAY resumed the stand and referred to Mrs. Tower's account.

Mr. Thomson said he wished to show that on the 3rd of May, 1879, \$1,000 was placed to the credit of Mrs. Tower in the Maritime Bank and the proceeds of a Cuban draft; of this amount he claimed \$500 had been paid toward the advances made by the bank to Capt. Tower. Mr. Kerr objected to the evidence. Witness continued—Mr. Tower's account







HOWARD C. THOMAS.



was opened on the 15th May, 1879. A draft was drawn at Cardenas, 13th May, 1879, by Rojas & Peacot for \$913.25, on demand, on Plock & Co., New York, in favor of Mary A. Tower. The draft was paid and placed to the credit of the bank through John J. Cisco & Co., New York, and was afterwards paid to Mrs. Tower, who afterwards deposited \$1,000 in the bank. This amount was afterwards checked out in sums of \$500. The court adjourned for dinner after which

CAPT. SMITH resumed the stand, and spoke of the spaces that are generally left in small vessels aft and forward, after stowing the cargo. A vessel laden with molasses and waterlogged would, he thought, sink. There are wreckers about the Bahama Isles. A disabled vessel in the straits might find shelter under the lee of the Great Isaacs, and probably find shoal water there. If the Brothers' Pride was in lat. 47 N., and lon. 79, 42 W., the distance from that position would have been 42 miles to a lee under the Bahamas. This would be in a S. E. course. A vessel loaded with molasses will have a disagreeable smell in the hold and the longer the hatches are closed down the more disagreeable the smell. Juror Dixon asked if a candle would burn down in the hold. Witness replied that it would burn but very dimly in the oppressive atmosphere.

Cross-examined by Mr. D. S. Kerr—Vessels he has commanded, have principally been schooners, and there was a difference in loading larger vessels. The Gulf Stream is continually running around Key West and to the northward; it runs sometimes two and three knots, but witness could not say that it runs faster one time of the year than other times; the stream is not always squally. Witness said as he understood the law the captain of an abandoned vessel is not allowed to set his abandoned vessel on fire, but the first parties who come in contact with her afterwards have a right to dispose of her by fire or put her out of the course of navigation. A vessel like the Brothers' Pride with twelve feet of water in the hold would not obey her helm.

Juror Hegan pointed out that Mr. Beste had said in his evidence that a cask of melado would weigh 1,950 lbs. The juror wanted to know from witness if a vessel of 442 tons could carry a cargo weighing 800 tons. Witness replied that he did not think she could. Witness has handled very few casks of melado, but carried a part of a cargo one voyage.

The court adjourned until morning when Captain Smith resumed the stand, and said he did not know the Brothers' Pride very well; had been in her two or three years ago; he has seen vessels that would hold more molasses than she would carry. A vessel with one deck would carry herself full of molasses, and some on deck; the same vessel with a spar deck, or a deck above the lower deck would contain more but would not carry her between decks quite full, at least she would not carry both holds full. There are many vessels constructed in this manner. A flat burthen-some ship will carry more than a sharp, deep ship. A vessel of 442 tons, an ordinary dead weight carrier, would carry 600 tons cargo. The casks of a molasses cargo are not bunged up until after they are taken from the vessel; this is to prevent fomentation. In filling up the after part of the ship casks could not be laid as compactly as in the run of the ship. In some places it would be necessary to stow casks head to head with a space between; it is not so requisite to have casks prevented from working fore

and aft as athwartships ; never saw vessels with timbers  $1\frac{1}{2}$  ft. apart ; some vessels' timbers are a hand's thickness apart, others one could run an arm between. A vessel with timbers  $1\frac{1}{2}$  ft. apart would not be very staunch. Witness could not say that the Brothers' Pride, having grounded in Cardenas, loaded and under full sail, would have received any injury.

Juror Roxborough—If a vessel of 442 tons, with a cargo of 517 tons, draws 14 ft. of water, or 2 in. off the Plimsoll mark, how much more would she draw with 600 tons? A.—About 2 ft. more. Proceeding Capt. Smith said, vessels have different drafts, some are more buoyant than others. A vessel drawing 16 ft., of the Brothers' Pride's dimensions, would have her main deck under water and would not, he thought, pass over the bar at Cardenas harbor. In his opinion, if the vessel ran 144 miles in a leaky condition, the captain could have got her to port somewhere. An officer of the Board of Trade had told the witness one time to put the Plimsoll mark wherever he liked ; the mark seemed to be more to please the sailors than anybody else. The log-book was put in witness' hand. Mr. Kerr objected to the log-book being referred to. It was a worthless piece of paper. The mate had contradicted his own statements about it.

His Honor admitted this, but allowed the witness to make comparisons from the book. There was no indication of a heavy sea or heavy gale in the entries in the log-book, after leaving Cardenas. A vessel in a four knot breeze would carry all sail ; such a breeze would not kick up much of a sea, probably a little slop of a sea, nothing more ; not what sailors would call a rough sea. As a general thing the log is written up every day, but frequently particulars of the voyage are noted on a slate provided for that purpose, and in this way memoranda are sometimes kept for 48 hours ; if a gale sprung up it would have been but proper to note it on the slate or log ; if a ship has not been useful in her young days she would not be useful in her old days ; she would be like a human being in this particular. After carrying a 517 ton cargo she might be able to carry a 600 ton cargo. A vessel loaded with melado and with 12 ft. of water in her hold would certainly sink ; it would not be necessary to fire her. Loaded with casks of water the vacuum in the casks would probably float her.

ROBERT HENRY LOUGHHEAD was called. He said he is agent for the British America Assurance Company, and knew the prisoner who made application to witness for insurance on his house in Carleton. Application produced. Mr. Pugsley attempted to read particulars of the insurance.

Mr. Kerr—Stop, stop, now. My God ! where is this matter going to end. I beg your pardon, your Honor, for using such an expression, but where is this thing going to end. Why don't they bring along Mrs. Tower's wardrobe and find out how many dresses she has ? Wilful and suspicious minds will produce anything for evidence. Heavens on earth ! what bearing has this house insurance on the case ? Mr. Pugsley explained, and said he sought to show by this witness that when the prisoner insured his house he told witness how much had been expended on it.

His Honor said the insurance on the property ought not to be re-



ceived as evidence, but he would not exclude the value of the property being proved by the statement made by Capt. Tower of the worth of his house. Witness then said prisoner had applied to him in October, 1879, for insurance on his house in Carleton. The court then adjourned until Monday morning.

Monday Mr. Loughhead resumed the stand, said captain came to him and asked him to take a risk, and after making an examination of the prisoner's premises, a dwelling house, he acceded, and filled up an application for \$1000. The premises were in good condition at this time and made a very superior dwelling house, which had been thoroughly renovated. The captain said to witness that he had spent \$3000 in what witness thought were improvements. Witness knows the Hon. Mr. Justice Palmer. In the Spring of 1879 Mr. Palmer made application to him for insurance, first inquiring the rate for a risk on the freight of the Brothers' Pride, the amount not being stated. A short time afterwards two applications were placed in witness' hands for insurance in the Anchor Marine Co., Toronto, and Orient Co., New York. [Applications produced and identified by witness.] Mr. Pugsley offered them in evidence. Mr. Kerr objected that they were on advances, did not come within the Act, and were not mentioned in the indictment. His Honor noted the objection, but received the evidence. The words "freight and" in the application, witness said were struck out in the presence of Judge Palmer. Freight and advances is not a usual insurance, two separate interests. The local board object to insurance on both, and of this fact witness notified Judge Palmer and the application was drawn on advances alone.

Mr. Kerr again objected to the application. The policy should be produced, he said otherwise the evidence was void. In this connexion he quoted Russel and Ryan, page 137, Rex. vs. Gilson. Mr. Thomson contended the case quoted had no bearing on the present case. An application, he held, was as binding as a policy itself.

Mr. Kerr arose again and read from Archbold's Criminal Evidence, pages 560, 561 and 566, in substantiation of his objection. His Honor said it did not appear that the case in Russel and Ryan covered this case. If the company had issued an approved application, he thought it was a contract for insurance. Whether an individual could be found guilty of a fraud on underwriters because only an application was issued for insurance, is a question which His Honor could not decide now. He received the evidence, but subject to Mr. Kerr's objections. Witness continued, and having finished with the Anchor Marine application, explained the Orient application. The words "freight and" were erased as in the other policy, and "advances" left. This was accepted, he said, by Judge Palmer, and both applications became binding insurances from that time. One application stated that applicant was to have the privilege of an additional loading port in Cuba by paying  $\frac{1}{2}$  per cent. extra premium. This policy was in the Anchor Marine for \$1500, 2 per cent., dated March 26, 1879, from Cuba to N. Hatteras. The Orient application was read for the same amount, date, voyage and premium, but not the privilege of another loading port. A notice of abandonment by A. L. Palmer to the Anchor Marine, dated 14th May, 1879,

was submitted as evidence, and accepted, subject to Mr. Kerr's objections on the ground that it was an action that occurred subsequent to the time of the offence the prisoner is charged with. A similar notice to the Orient Co. was treated likewise. A letter from Mr. Palmer requesting the payment of the Orient policy, and dated August 7, 1879, was also submitted. Mr. Kerr objected in that there was no proof of Mr. Philip Palmer's authority.

His Honor received it reserving the point for Mr. Kerr. The adjustment and protest of loss on advances dated 26th May, 1879, signed by A. L. Palmer, on both Orient and Anchor Marine companies, was submitted and accepted. A draft, referred to in the above protest, was then offered. It was signed by Captain Tower, dated at Cienfuegos, 12th March, 1879, for \$3000, drawn on P. I. Nevius & Son. The draft was payable 15 days after her arrival at the next port of discharge. A letter from Philip Palmer to C. E. L. Jarvis, dated August 28, 1879, enclosing three protests from C. A. Palmer, D. J. McLaughlin, Jr., and A. L. Palmer; Mr. C. A. Palmer's related to the freight, Mr. McLaughlin's set forth that he was an owner of the vessel, Mr. A. L. Palmer's related to the insurance on the advances caused by disbursements. These and other preliminary proofs of the policies were admitted, subject to Mr. Kerr's objection.

SAMUEL SCHOFIELD was then called. He is a ship owner and agent of 22 years' standing. He stated the Brothers' Pride's value in 1879 would not exceed \$5,000; purchased at private sale the Belle Walters, brigantine rigged, 400 tons, and 2 years younger than the Brothers' Pride, in 1879, for \$4,000. A vessel of 442 tons is too small for a barque; too expensive to run.

Cross-examined by Mr. Kerr—The Belle Walters would carry about 195 standard of deals. She was not as valuable in the West India trade as the Brothers' Pride; would have re-sold the Belle Walters for \$5,000. In answer to Juror Courtenay, witness said it cost \$1,000 outlay to make her sea-worthy after he purchased her. The court adjourned for dinner, after which Mr. Schofield resumed the stand. He knew a vessel called the Lizzie Gillespie; lost in December, 1879, near Cape Canso; had \$8,000 in insurance on her; was 425 tons; he could not state her age. She had no hurricane deck, and was adapted for the West India trade; expended \$2,000 on the Belle Walters after he purchased her and before he sent her to sea; but this amount, witness explained, was not requisite merely to make her seaworthy. Underwriters like to have the valuation as large as possible.

Re-examined by Mr. Thomson—As regards partial losses, the underwriters are better off, if the vessel is largely insured, than otherwise; has seen as high as \$7.50 freight paid for sugar from Matanzas to New York; last year \$5.25 was a good fair freight on sugar between the last-mentioned ports; molasses' freight is paid per 110 gallons, gross gauge. This closed Mr. Schofield's testimony.

Mr. Thomson arose and addressed Judge Palmer, who had come in court a few minutes previously. Mr. Thomson asked the Judge to produce two policies of insurance on the Brothers' Pride for \$3,000, half in the Orient Mutual Company, of New York, and half in the Anchor



Marine Company, of Toronto. Mr. Palmer handed Mr. Thomson a policy in the Anchor Marine Company. Mr. Thomson asked where the other policy was? Judge Palmer declined to answer the question unless sworn.

Mr. Thomson—I submit that Mr. Palmer, because a Judge, has no right to set this court at defiance, but has a right to answer the question. I ask His Honor's decision in the matter.

His Honor decided that Mr. Palmer should answer Mr. Thomson's inquiry, whether he had the policy or not.

Judge Palmer—I do not think that I have. I will answer it if sworn.

Mr. Thomson—You are not presiding over this court. Your duty is to answer the question put to you. The defence may swear you but I will not.

His Honor said it would be better for Mr. Palmer to confine himself to Mr. Thomson's question.

Judge Palmer—I will answer if it is the Chief Justice's decision, but under protest. I have not got the policy in my possession.

Mr. Thomson—Do you mean to say that? A. I do.

Mr. Thomson—Then you have placed it beyond reach, out of your hands; transferred it to other parties.

Judge Palmer—I hope it will not be presumed that I did.

Mr. Thomson then called upon the judge to produce other papers. Judge Palmer replied that he had not had time to look them up; he had only been served with notice to produce a little before two o'clock. Extension of time was given until afternoon, and the Judge was asked to produce the following list of policies on the Brothers' Pride, freight and hull:—

In Lloyds, London, issued on the freight April 25th 1879, for £300, and paid July 22nd, 1879; in the same company, two other risks, on the hull and materials, one for £300, issued December 30, 1878, and paid July 2, 1879; another for £300 on the hull and materials, issued December 24, 1878, and paid July 7, 1879; another, in the same company, a similar risk for £150, issued December 18, 1878, and paid July 20, 1879. One in the Universal Marine, London, for £500 on hull, etc., issued December 19, 1878, and paid June 28, 1879. One in the Merchants Marine, London, for £150 on hull, etc., issued December 31, 1878, and paid July 2, 1879. Two in the Home Colonial on hull, etc., for £400 and £100, both issued January 9, 1879, and paid June 26, 1879. One in the London Provincial for £500, issued December 19, 1878, and paid July 27, 1879. One in the Thames and Mersey for £500, issued June 2, 1879, and paid July 4, 1879. He was also required to produce all correspondence between himself and Belyea & Co., Liverpool, Roxborough, Currie & Co., and Stevens & Thomson, London.

CAPT. DAVID BODDIE was then called and examined by Mr. Alward. He said a vessel of 12 feet 9–10, 442 tons, having on board 863 casks melado and 12 ft. of water in hold would sink; with 7 ft. of water in the hold she would sink. He has seen melado in casks; it would run.

Mr. Alward—What part of it? Captain Boddie—About half of it. He has been in Cardenas harbor twice. The Florida coast line, witness said, is broken with reefs. If he was in a vessel off the Florida coast in lat. 27, N., the wind N. E. to E. N. E., and blowing fresh, a heavy sea, pumps disabled and ship leaking, he would put the vessel before the wind, and if leaking one ft. per hour, and a gale blowing and a high sea, he would get the boats out and prepare to quit the vessel. If he

abandoned a vessel he would not set fire to her. Law in England does not allow the master to set fire to his vessel or damage her in any way.

Mr. Alward—How do you understand the law as coming upon a derelict?

Mr. Kerr objected, and claimed that there was no law forbidding a mariner to fire his abandoned vessel. Such a law was against justice and common sense, and if another vessel had found an abandoned vessel, damages, if any, could be claimed. [Register of the Brothers' Pride produced.] If the Brothers' Pride drew 14 ft., with 517 tons of cargo, with 720 tons she would probably draw 20 in. more. Her beam, witness said, from an examination of her registry paper, was very large; thought her cargo could be stowed with considerable regularity.

Cross-examined by Mr. D. S. Kerr—Witness has followed the sea 48 years. He has never taken refuge at Carrisford reef light. Under close canvas he could approach the light within a quarter of a mile. If he was 50 miles out to sea out of sight of land, he would have hoisted signals—done it because it was his duty. Assistance might be somewhere.

Mr. Kerr—By the way, witness, where did you get your English law about burning a vessel? He could not say it was impossible for a vessel of 215 tons to carry 440 tons. Molasses does foment and make a bad smell. The court adjourned till morning, when

MICHAEL MCCARTHY took the witness stand and was examined by Mr. Pugsley. He has had 50 years' experience in shipbuilding. Starting a butt is the separation of the ends of the planking. He never saw a vessel start a butt; thought it impossible for a vessel to start a butt. Vessel property was at low value in 1879; sold one-half a vessel similar to the Brothers' Pride, 7½ years old in 1871, for \$4000, the half of the vessel having originally cost witness \$9,600; would not have given this vessel for two of the Brothers' Pride. A vessel drawing 14 ft., with a depth of hold 12 ft. 9-10, and a cargo of 517 tons, would probably be loaded nearly down to the main deck. A vessel's draft depends upon her build.

Cross-examined by Mr. Kerr—Worms would injure a vessel, especially in Monte Video and the West India ports. They play around the seams. Copper does not strengthen a vessel. If copper is put on evenly it will wear all over the vessel the same. Vessels are continually having the copper repaired. He could not, from personal knowledge, tell what starting a butt is; never saw a vessel with butt or butts started. Iron coming in contact with copper will not last well.

Re-examined by Mr. Thomson—He had never seen coal put between decks; he dislikes hurricane decks; iron and copper will not agree, the latter will eat the former; butt bolts are put in before the sheathing is put on; copper sheathing will destroy the iron bolts if they are exposed to the copper.

STEPHEN J. KING was sworn and examined by Mr. Alward. He was Secretary of the Board of Underwriters in 1879, and in the latter part of September of that year Captain Tower came to witness and said he thought the rate he was paying was too high, and asked him for a reduction, saying he had just expended in improvements on his house the sum



of \$2,600. A vessel with hurricane deck added after launching would not be as valuable as one originally built so. If a vessel of 500 tons had 200 tons added she would not have anything added to her dimensions or timbers; she would still remain 500 tons.

Cross-examined by Mr. Kerr—New Brunswick vessels are not, as a rule, classed in English Lloyds. They are classed in Bureau Veritas or French Lloyds, of which Mr. Sime is the St. John agent, or two American associations, of which Captain Betts and Mr. Thomson are the St. John agents. In insuring vessels the insurer wants to put the valuation as low as possible, and the company as high as possible.

To Mr. Pugsley—He, in course of his business must have seen some of Lloyds' policies. [An alleged Lloyds' policy was put in witness' hands.] Witness, from an inspection of the policy, believed it to be a Lloyds' policy.

To Mr. Kerr—He had never seen the original Lloyds' seal and could not swear to the handwriting or signatures. After Mr. Pugsley had submitted several other policies for witness' inspection, all of which he failed to prove, he said to juror Hegan that it was not usual to state in marine policies the additional insurance.

ALFRED RAY, cashier of the Maritime Bank, was re-called and identified a draft dated Cardenas, 3rd May, 1879, for \$913.25 and paid to Mrs. Tower, prisoner's wife. The draft, published elsewhere, was submitted and received as evidence subject to Mr. Kerr's objection.

DANIEL W. CLARK was then called and examined by Mr. Alward. He knew the Brothers' Pride and owned 16 shares in her until 1873; he sold out to Judge Palmer. He owned 16 shares in the Royal Sovereign, 330 tons and sold his interest in both vessels at one time to Judge Palmer for \$2,000.

Cross-examined by Mr. Kerr—The Royal Sovereign was at sea when he sold her and had been ashore at Canso the year before; she was in a law suit at the time he sold her. He was not paid \$2,600. Judge Palmer asked witness what he would take for his interest in the vessels. Witness asked what will you give? Judge Palmer said \$2,000 and witness accepted; he knows Captain Tower who was master of the Bessie in which witness had a fourth interest. Captain Tower he had always known to be a respectable man.

Mr. Thomson—From what you have heard Captain Letteney say, who sits there in the jury in your presence, have you not had your mind affected concerning this case? Did you not hear Juror Letteney declare he would not believe Howard C. Thomas under oath?

Mr. Kerr arose to reply to Mr. Thomson and had the witness restrained from answering. He said that Mr. Thomson's bearing towards the jury was most offensive and in emphatic tones declared his remarks a gross insult to the jury box and the country at large. The trial, he affirmed, was a private one and conducted by underwriters. Such procedure had never been known since Magna Charta was passed, 700 years ago.

Mr. Thomson explained and said it was only after great deliberation that he had concluded upon this course. The eyes of the people of the United States, of the people of England and Canada were watching this trial and he wanted it to be known that if the prisoner was not brought to justice it would be because the jury had been tampered with.

The court adjourned for dinner after which Mr. Thomson addressed Judge Palmer, who appeared in court, and asked him if he had the papers that he was on Monday requested to produce. Judge Palmer said he had not the policies of insurance and had never heard of them. He had no correspondence with Belyea & Co., Roxborough & Co. or Stevens & Co., that had any bearing on the Brothers' Pride insurance policies. The Judge was then asked to produce an account current with Belyea & Co., London, up to June, 1879, and agreed to produce it at a later period.

RANDALL A. MORRIS was sworn and examined by Mr. Alward. He resides at Advocate Harbor, N. S. He has followed the sea since 1864. He knew the Brothers' Pride and had charge of her as captain in 1872; left her in St. Stephen, June 1873; was at Cardenas in the Pride and took in a melado and sugar cargo. The cargo was taken from lighters. In leaving the harbor she grounded on the bar, so called, the vessel being fully laden and drawing 14 ft; remained aground several hours. There is not much of a tide in the harbor. There was a pilot on board when she grounded; the wind was light, and she struck the bar without much force, and remained buoyant. The water is not clear in the harbor and he could not say he saw muddy water about her. There was an air-streak in the hold; he could not say how far below the main deck, but he would think from  $2\frac{1}{2}$  to 3 ft.; the air-streak ran, he thought, fore and aft, both sides; carried in her a cargo of lumber, a cargo of stone and hay, one of coals, one of melado and sugar; the coal cargo was 605 tons; she drew then between 14 and 15 ft.; could not say that she would not carry 863 casks melado, though he would think it a large under-deck cargo for her; could not say that melado is heavier than molasses; good deal depends on the quality of the molasses; he would think melado the heaviest; could not say whether the Brothers' Pride would sink laden with 863 casks of melado and 7 ft. of water in her hold; she would sink with 12 ft. of water in the hold.

Cross-examined by Mr. Kerr—Oulton Bros. engaged him to go in the vessel. Salt water is more buoyant than fresh water, and a vessel would draw more in New York harbor than on the Atlantic. The air streak corresponded with the shear of the vessel. Molasses hogsheads are 32 in. head, and sugar hogsheads are 36 in. and 38 in head on the south side Cuba, and 40 inches on the north side of Cuba. He has known vessels to have their bottoms eaten out by worms. Witness put a new main-mast in the Brothers' Pride when he had charge of her; she also wanted new boats, sails, etc. In 1873 he did not consider her hurricane deck very substantial.

Re-examined by Mr. Thomson—If the leak was from below she would make water as well in calm weather as in rough weather.

Mr. Thomson then offered as evidence a power of attorney from C. A. Palmer to Wm. H. Nevius, Brooklyn, New York, dated 23rd April, as preliminary proof of the policy of insurance of \$2,000 in the New England Insurance Company on the Brothers' Pride and giving authority to collect said policy.

Mr. Kerr objected, that the evidence had no relation to his client. No relation to what is set forth in the indictment.



His Honor said he would receive it subject to Mr. Kerr's objection. Mr. Pugsley then said they had finished the case for the Crown, but asked permission to bring a matter of a serious nature before the court. It has been rumored, said Mr. Pugsley, that one of the jury in the present case was sworn while having expressed an opinion in reference to the charge against Captain Tower. He wanted to bring the matter before the court at the proper time and wished to do so before proceedings went further. He wished it to be distinctly understood that he had no personal reference to any of the jury; the charge had been brought before him and as a Crown officer he wished merely to do his duty. By a motion he would make he did not intend to reflect on the jury, and it might be that the gentleman that he would name, being bound by his oath, would weigh the evidence offered as carefully as the other members of the jury. The fact of the charge should be adduced before a proper body of inquiry and he would ask the court that an order be granted or a commission appointed before the case proceeds further to examine and find out whether a contempt of the court in this particular had been committed or not. He proceeded to read the following affidavits to substantiate his belief:—

The Queen vs. Wm. H. Tower: I, Daniel W. Clark, of Carleton, in the City of St. John, make oath and say that I reside in Carleton, aforesaid; that I am acquainted with the above named Wm. H. Tower; that I am well acquainted with Robert Letteney, one of the jurors sworn to do justice in this cause; that some time after the arrest of the said Tower in the course of a conversation I had with Robert Letteney, at his house in Carleton, aforesaid, about this case, and the said Robert Letteney then and there said to me that no man could make the said Robert Letteney believe that the said Wm. H. Tower had scuttled the vessel, the Brothers' Pride. (Signed.) D. W. Clark. Sworn before I. A. Jack, April 14, 1880.

The Queen vs. Wm. H. Tower. I, Jacob C. Ross, of Carleton, in the City of St. John, in the City and County of St. John, in the Province of New Brunswick, police officer, make oath and say:—

1. That I reside in Carleton, in the said City and County of St. John.
2. That I am acquainted with the above named Wm. H. Tower.
3. That I was present at the present March Circuit of this court on Tuesday, the 13th day of March last past, when the trial of this cause was moved and while the jury in this cause was being called.
4. That I am well acquainted with Robert Letteney, one of the jurors sworn in this cause.
5. That when the said Robert Letteney was called I heard him challenged by Mr. Thomson, one of the counsel for the Crown in this cause.
6. That I heard the said Robert Letteney sworn to true answers make to such questions as the court might demand of him.
7. That I heard him state in reply to questions from Mr. Thomson that he knew Tower only to pass the time of day with him, and that he had formed no opinion nor had he expressed any opinion about this cause, nor touching the guilt or innocence of the said Wm. H. Tower of the crime charged against him.
8. That the said Robert Letteney was afterwards sworn as a juror in this cause.
9. That on the third day of February last past the said Robert Letteney was in my house in Carleton, aforesaid, and that on that occasion, after talking on common subjects, the matter of the said Wm. H. Tower scuttling the barque Brothers' Pride came up, and the said Robert Letteney then said a lot of d—— old sailors had put their heads together either through malice or through a promise of money to trump up this charge against Captain Tower, but that he would not believe the oath of all the old sailors he ever saw that the said Tower had scuttled the barque Brothers' Pride, and he asked me if I supposed Captain Tower would be such a d—— fool as to let Thomas know or get Thomas to do this job when there were plenty reefs and ledges he, the said Tower, could run her on and no one would know the difference.
10. That two or three days after this I met the said Robert Letteney again,

when he said that Cleveland thought the people down here a lot of G—— d—— fools, who did not know anything, but that if old Palmer got hold of Thomas he would think the devil had him. (Signed.) Jacob C. Ross. Sworn to before I. Allen Jack, Commissioner, &c., April 14, 1880.

The Queen vs. Tower: I, Richard F. Quigley, barrister-at-law, make oath and say that some days since I had a conversation with one John Richards, of Carleton, in the City and County of St. John, aforesaid, touching the above prosecution; that in that conversation the said John Richards repeated remarks he had heard uttered by one Robert Letteney, one of the jurors sworn in the above case before the said Robert Letteney was sworn as aforesaid; that I solicited from the said John Richards an affidavit of the expressions so used by the said Robert Letteney at the time aforesaid; that he, the said John Richards, refused to give me such affidavit and said that he would give evidence of what he heard and knew in this matter when called upon and compelled by some competent judicial authority. (Signed.) R. F. Quigley. Sworn before A. O. Earle, Commissioner, &c., April 14, 1880.

The Queen vs. Wm. H. Tower: I, Wm. Pugsley, Jr., of the City of St. John, Esquire, make oath and saith: 1st. That it having been brought to my notice that a certain juror named Robert Letteney had been improperly sworn as a juror in this cause and that the circumstances under which he was sworn were likely to defeat the ends of justice and show a contempt of this honorable court, and being desirous of informing myself as far as possible as to such circumstances, I have inquired of J. A. Harding, Esq., High Sheriff, and John Rankin, Deputy Sheriff, of the City and County of St. John, and was informed by the said James A. Harding that, previous to calling the said Robert Letteney as a juror, the name of said Robert Letteney was handed to him upon a slip of paper by the said John Rankin and I was informed by the said John Rankin, that the name of the said Robert Letteney had been given to him by Wm. Buchanan, a constable in attendance on this court; 2nd, I believe that a contempt of this honorable court has been committed by some one or more persons in giving to the Sheriff the name of Robert Letteney and in the circumstances under which he was called and sworn as a juror, and in order to ascertain whether or not such contempt of court has been committed, I believe it desirable that the following persons, viz: J. A. Harding, John Rankin, John Richards, Enoch B. Colwell, W. Buchanan, Mr. Mayes, Joseph Vail, John Kerr and Charles A. Palmer, Esqs., should be examined under oath regarding the said matter. (Signed.) Wm. Pugsley. Sworn at the City of St. John, this 20th day of April, before J. G. Forbes.

Mr. Pugsley said it would be advisable for the inquiry to be held before His Honor the Chief Justice.

Mr. Kerr said this was one of the most impudent and disgraceful applications ever made. He was sorry Mr. Pugsley had so prostituted his abilities.

The Court—Mr. Kerr, this is too strong language.

Mr. Kerr—But he has passed an extraordinary judgment on the rights of jurors.

The Court—It is wrong to charge him with acting disgracefully.

Mr. Kerr continuing, said he could not but notice these grasping creatures who with their evil devices think they will intimidate Captain Letteney who had been challenged, tried and found competent, and it was not for the counsel now to assail his competency. He said it had been a private prosecution, and he had shown that the creatures who came into court and gave evidence against the prisoner were paid wages, and he asked when had the Crown ever paid its witnesses wages? He claimed that everything on the prosecution side was rotten, and that a conspiracy was obvious, and said he would defend the jury until the blood ran down his legs. He defied the prosecution to intimidate him and charged his opponents in the case with using every unfairness they



could think of to make out a case. The name of the Crown in the cause had been, he said, gagged. Crown witnesses should give recognizances the same as Annie Parker did. He asserted that bribery and corruption were rife in the case and had asked how much Mr. Thomson was receiving as a retainer, and Mr. Alward likewise, but could not ascertain. Mr. Pugsley, he also accused of being paid by the underwriters. All these facts he had endeavored to expose, but was prevented by the court.

Mr. Pugsley interrupted and denied that Mr. Kerr had asked him such a question; denied receiving any money from the underwriters and declared Mr. Kerr's statement to that effect very dishonorable.

Resuming, Mr. Kerr said Mr. Pugsley did not know what honor meant. Mr. Thomson and Mr. Alward stood far above Mr. Pugsley, he said. He then spoke of Captain Letteney as a man acquainted with sea life and a fit and proper person for a juror.

His Honor—Do I understand Mr. Kerr that you object to the commission and trial?

Mr. Kerr—I most certainly do—such a trial would be an infringement upon the rights of a jury. Everybody has been, he said, compelled to form an opinion upon this case from reading the daily papers; it was impossible to blind people. But this fact does not prevent a man from giving a fair and impartial judgment in the case. This was not the time to bring an objection of this kind before the court. It is an unheard of proceeding; and he was astonished at the course pursued by Mr. Pugsley, whether he (Mr. Pugsley) was employed by the Crown, Mr. Cleveland or anybody else. He then paid a tribute to the jury system, which he said was a right of inheritance—the jurors pass away and their children come to take their places—and closed his reply by terming the motion a mere species of bullying or side wind.

Mr. Thomson re-butted Mr. Kerr's statements. The charge, he said, was not against Captain Letteney, but that he had formed an opinion. He is sworn and expected to give a just verdict. Captain Letteney had not done as other challenged jurors, honestly stated that he had formed an opinion. He claimed that Mr. Kerr's speech was captious and calculated to work on the minds of the jury. Captain Letteney, he stated, was placed upon the jury by fraud. He thought Sheriff Harding was clear of any connection with the matter, but he hoped the court would assert its own dignity and endeavor, if possible, to uncover the affair. He defended Mr. Pugsley and claimed that Mr. Kerr's request to know what the counsels retainers were was a glaring piece of impudence. He would ask that the examination be held before the Chief Justice.

His Honor said it was a grave and serious charge but thought the present stage of proceedings was not the proper time to hear the inquiry. Before the court adjourned, however, he would order an inquiry. The integrity of the jury box, he said, should be kept free.

Mr. John Kerr informed the court that he was ready to appear for examination whenever it should please His Honor to order it. He had been instructed to say the same for Mr. Charles Palmer.

Mr. D. S. Kerr—I have only to say it is a vile conspiracy in piece with the way the case has been carried on.

The court then adjourned until the following afternoon in order to give Mr. Kerr time to arrange his defence and his address to the jury

Previous to addressing the jury he spoke upon the juror Letteney trouble. He read an affidavit in which he denied having any connexion with the alleged Letteney affair, or having tampered with the witness in any way.

Mr. D. S. Kerr said the matter must be investigated before he would address the jury. The charge was trumped up to cast a cloud over the whole trial.

Mr. John Kerr proceeded to address the jury and referred to the present trial as one of the most extraordinary ever tried in this country. In the United States the prisoner is allowed to speak for himself, but here his mouth is closed. He then proceeded to discuss the different counts in the indictment, and continuing cited the penalties for the alleged crime. He thanked God that they had not got to that pitch of perfection that they had in the United States, where witnesses could be produced for money—and swear a felony against any one. He asked how much reason had there been shown for the charges made against his client, and proceeded to show that this was a private prosecution and read Mr. Cleveland's, Roberts' and Thomas' affidavits to substantiate his statement. If the jury could see what Mr. Cleveland has done in his endeavor to bring the case about, they would certainly say it was a private prosecution. He then pointed out that Thomas had made an information against himself—a most extraordinary proceeding. The amount of insurance was, he claimed, the thing that galled the underwriters, and if an action had not been brought to recover this insurance, the case would never have been heard of. The penitentiary is the place for such cattle as Thomas, he said, and he then referred to the paid witnesses. Thomas had perjured himself, wilfully perjured himself, and the other witnesses had most convenient memories. In reference to Hall, the steward, no dependence could be placed in him. The case had been brought to smirch the gown of one of our most learned judges, and if it was possible to fix the charge against Judge Palmer the prosecution would do it. He then referred to the Juror Letteney matter, and claimed the action against the juror was nothing more than an intimidation. It was peculiar, he said, that no evidence of the firing or boring of the bow ports had been made known at the police court examination. He had never known before in a Crown case for the Crown counsel to interview the witness before the case came to the jury. He referred to the Naval Court inquiry held in New York, and called attention to the law against perjury, reading the penalty to the jury. In closing, he read to the jury from 3rd Russell, pages 598, 602, 603 and 606, in reference to the competency of the accomplice, Thomas, as a witness, and referred to *Regina vs. White*, 4th Fos. & Fin. In his defence he would show that the vessel came to her death by fair and not by foul means, not by boring or fire. He would prove that Thomas had lied from the first and was a liar of the first water. Roberts had also perjured himself, and his story would be like the story of the firing of the vessel he made, all moonshine. There was not a tittle of truth about the firing of the vessel. He repudiated utterly the statement that Judge Palmer had written to Captain Tower to scuttle the vessel. When Judge Palmer is put upon the stand there



would be, he said, another account of the insurances. Howard C. Thomas, Mr. Kerr asserted, would never be tried, though he might be, however, as this was an age of surprises—the Crown is mighty and can do as it pleases. He would produce such an array of evidence as would clear Captain Tower entirely of the charge.

JOSEPH C. HUGHES was then called and sworn as the first witness for the defence and examined by Mr. John Kerr. He resides in New York, is an average adjuster, insurance broker and notary public, and was acting in this capacity in the month of May, 1879; he saw the prisoner in May, 1879. Capt. Tower was brought to his office by the agents of the Brothers' Pride, Peter I. Nevius & Son; never saw Capt. Tower before this protest was made and speaking of the loss of the vessel he asked the captain to produce his log-book. The captain stated that the mate had lost the log-book and that he could not produce it. He told the captain that he wanted then a full account of the loss of the vessel from memory and every one of the crew to corroborate the statement. [The original protest produced.] The captain, who was with Mr. Nevius at this time, went away and returned shortly afterwards with the crew. He examined the crew who added their statements to the captain's of the loss of the vessel; he wrote the statements of the captain and Roberts from their own lips and asked the questions about the loss of the vessel. About the log-book he questioned Roberts very closely; took the names of the crew and read the statement over to the captain and the crew, who were assembled together in witness' office; read it in an audible voice, and none of the crew made any objection. While the protest was being signed three of the crew left the office saying they were going to the consul's office. These were Williams, Hahan and Trisinski. He swore the crew and, before swearing, Jerry Spline asked that the statement be made out again, there were some words he did not understand; he asked them in detail and individually if there were any objections that they wished to make. They said no, that they had nothing further to state. The crew then signed the protest in the order of their rank, the captain first, Roberts next and Thomas afterwards, and George H. Hall as steward, Joseph Anderson, Charley Lutchy [Lutz], Jerry Spline swore then separately. The captain returned during the day with Hahan and Trisinski, and the statement was read over to Trisinski and Hahan. They signed the protest then and swore to it. There was another man with Hahan and Trisinski. His name, Cassunine, a Russian, was attached to the protest, but as he did not understand English, witness erased the name. Mr. Kerr offered the protest in evidence.

Mr. Thomson cross-examined the witness upon the protest. Witness said he wrote part of the protest while the men were before him and part after they went out. Witness did not particularly question the crew about the water in the hold; he thought the steward should have known how much water there was in the hold; knew in many instances that cooks and stewards knew more about vessels than others; remember Trisinski because it was difficult to spell his name, which witness made Trisinski write out for him; was particular with witness because there was no log-book. The men all professed to know that the log-book was lost.

He made general enquiries about the loss of the vessel, the log-book, etc. Mr. Kerr then offered the protest in evidence, as testimony to contradict the witnesses Roberts, Thomas and others of the crew. Mr. Thomson objected that it showed the captain had perpetrated a gross deception on Mr. Hughes.

His Honor said he would admit it and pointed out the fact that it had been partially admitted already. The clerk then read the protest. [For protest see page 5.] Continuing his direct examination, witness said he would think all the crew understood what the protest meant. He has been engaged in the ship protest business for 14 or 15 years. The Naval Court proceedings were then put in witness' hands. He compared them with the record of the proceedings in the Consul's office. The paper in his hand was a true copy of what he saw. Mr. Kerr offered the proceedings in evidence and it was accepted and read by the clerk. [For Naval Court proceedings see page 6.] Continuing, witness said that on hull risks underwriters require a high; owners a low valuation. Witness made insurance on a hull valued at \$20,000; had known the owner of the vessel similarly insured to obtain additional insurance on the same hull by placing valuation say \$5,000 higher.

Mr. Kerr—If a vessel is insured for a voyage from Cardiff and Cienfuegos, thence to north of Hatteras, but loads at Cardenas, would that policy attach?

The question was overruled as a question of law. Witness said it frequently happened that property is doubly insured. Expenses of insurance, premiums, etc., do decrease the amount insured. A vessel owned by different parties, each insuring their interests, may be over-insured. If a ship deviates the insurance is lost, if anything happens the vessel; could not say that premiums of insurance are insurable interests; thought they could not be called separate interests.

Cross-examined by Mr. Pugsley, witness said he has known the agent and principal to insure the same values.

Mr. Pugsley—Do you think this right? The court disallowed the question.

Mr. Pugsley—Is it a practice to collect these double insurances? A. No it is not. It is not usual to insure a vessel up to her full value, but it is done. The oath administered when making a protest is "You do solemnly swear that the facts stated in this protest are true to the best of your knowledge and belief." Witness could not identify policies in the Home Colonial and London Provincial insurance companies. A policy in Lloyds', London, he might recognize. He did not think Lloyds had a seal; Lloyds' Act is a private Act. This policy, with one of the Thames and Mersey, Merchants' Marine, and Universal Marine, were offered, but rejected for want of sufficient proof. When the protest was made, Captain Tower said nothing about firing his vessel. Insurance beyond value is a moral hazard. Such a risk would not be taken indiscriminately.

Mr. Pugsley—Would it be considered honest and right for the owner to collect such insurance? The question was disallowed and witness continuing, said the valuation in marine policies is binding and conclusive except by fraud.



Mr. Pugsley—Suppose an owner having a vessel property valued at \$8,000, insuring it against total loss only up to \$20,000, would not that be evidence of fraud? The question was disallowed.

Mr. Kerr then offered an account of the abandonment of the vessel, as printed in the *Maritime Register*, to prove, in estoppel, he said, that Captain Tower had, up to the 23rd May, 1879, the date of the issue of this paper, known nothing of the insurances on the vessel. Mr. Thomson disputed the evidence. It was received, however, and Mr. Kerr pointed out that Captain Tower had said at the Naval Court inquiry that it was in the *Maritime Register* he first saw mention made of insurance. Witness continued: Where an owner may have made or have in view an engagement for his vessel some time ahead, he can by reason of that engagement consider the vessel worth more to him than her real value or intrinsic worth, or what another vessel of the same kind or class would be worth, and would insure up to a higher valuation with the consent of the underwriters. Partial losses are 10 to 1 to total losses.

Mr. D. S. Kerr—Suppose \$5,000 insured on a vessel valued at \$12,000, and \$8,000 insured on a vessel valued at \$16,000, and \$5,000 on a valuation of \$22,500, would that insurance according to practice be collectable and valid, no matter what the real value of the property at risk? Mr. Thomson objected that it was a question of law. Mr. Kerr then altered the latter clause of the question and it passed Mr. Thomson's objection, reading: "Would it pay?" Witness said an underwriter would not pay in any case where the valuation is fraudulent. If the insurances were made in the order set down by Mr. Kerr they would be collectable. It would also be a question who was the prior and who the subsequent insurer. He has known a freight to be insured for three times the amount at risk and held to be valid by the courts.

Mr. Thomson—What? Do you mean to say it could be collected? A. Yes, for a vessel frequently goes to a port and it is not known what she will take in. He has insured vessels by the year.

To a Juror—It is a common practice to insure freights by the year and the risk paid in case of total loss, even in cases where no freights were at risk.

GEO. A. SIMPSON was called—He said he is a master mariner of 28 years experience; has known Captain Tower for 6 years; known vessels to be badly worm eaten. From one vessel he had seen by the process of heat, worms drawn a half to one inch in length. A vessel of very broad beam would be likely to leak more than a narrow-beamed vessel. Cardenas is an open bay surrounded by small cays, and the nearer the town the more shoal the water. It is a wormy harbor, and has a dark muddy bottom, covered with eel grass. [Chart shown to witness, who explains harbor.] The second mate, witness said, is always in the captain's watch, and this fact would bring the captain and second mate frequently together. It would depend upon the wind how long it would take to go from Cardenas town to the vessel lying in the stream. If Captain Tower went ashore at Cardenas to settle his business on Friday night, he would be doing well to get back to his vessel on Sunday night. Usually boats do not, on account of the winds, leave shore there for down the harbor, until morning. A hole bored in the air-streak, three feet below the deck

could not come out at a seven-foot draft or at the light water line. The air-streak, from where witness understood it to be located, would be six or seven feet above the copper or light water line. A vessel would fill rapidly with water with four or five auger holes bored in her below the water-line. With one hole two pumps would not keep her clear. A loaded vessel with two pumps going and two  $1\frac{1}{4}$  in. holes admitting water would fill in 36 hours. It would not be possible for the pumps to "suck" with one hole running. If a vessel was on her starboard tack and the copper was 4 feet below the load line, the copper could be seen; never saw a vessel's timbers  $1\frac{1}{2}$  feet apart in the stern, they generally run close together. With 12 feet water in her hold no man could take her into any port. The vessel could not be taken into Jacksonville; she could not pass over the bar there. Where the vessel was abandoned the Gulf stream runs about three knots an hour. If the wind was blowing 4 knots and the stream running 6 knots, both in opposite directions, it would have been impossible for the vessel to sail against the stream in any condition. Here Mr. Kerr asked his honor to refer, by his notes, to Roberts', the first mate's, conversation that he said he had with witness, Captain Simpson.

His Honor—Did you see Roberts in New York? A. I did on New Year's day last.

His Honor—Did Roberts say to you on that occasion that he had a chance to make money; that he would pitch honor to the winds now, and was not going to sea any more? A. He did, or words to that effect.

His Honor—Did Roberts then say to you he was getting \$5 a day from the underwriters and \$2.50 for hotel expenses? A. He did. Witness, after a careful scrutiny, said, the B. P.'s bill of lading was an ordinary one. He has seen a cask of melado burst. The contents of some casks of melado would all run out, others would be part liquid, and part sugar. Witness knows a ship broker in Cardenas named Thomas C. Yannes, and has known him for a number of years; could not say that Yannes keeps a billiard saloon and dance hall.

Cross-examined by Mr. Thomson—If there was any leak in the bottom of the vessel she would make water in calm as well as in rough weather. A four-knot breeze would not strain a vessel with all sail set. By the way the Brothers' Pride was loaded, it was quite probable she dragged in the mud. The charter party states the cargo a captain has to carry. An ordinary melado cask would, he thought, weigh about 1,650 or 1,700 lbs.; had always known melado to be shipped as concentrated molasses. It would be prudent for the ship master to ascertain the weight of his cargo before receiving it; 863 casks would probably weigh about 620 tons; could not say a cask of melado would sink; thought it would. A vessel with 600 tons cargo on board and 12 feet of water in a hold 13 feet deep would float, he thought.

Mr. Thomson—Have you had any experience? A.—No, but with such a load in the hold there would not be much room for water. There might be a space in the stern between two casks dunnaged apart so as to prevent them rolling about. It would be a difficult thing for a man to put a plug in a  $1\frac{1}{4}$  in. hole in the bottom of a vessel at sea. If the vessel was on her starboard tack he could not say that the rush of water





CAPTAIN WILLIAM H. TOWER.





through the hole would be less. If the holes were two feet below the load line it would be difficult to put the plug in; would not say it could not be done; has heard the contents of melado casks swash. He has been a resident of New York six months, and is a shipping agent there; is not a boarding master. He met Roberts on New Year's day in the Eastern Hotel, New York. Roberts and he had a conversation there. Roberts was drunk and witness thought he did not know what he was talking about. Witness cautioned Roberts to say nothing about what he had to do with underwriters. At this time witness knew nothing about the loss of the 'Brothers' Pride; told Roberts if he had a chance to make money he had better hold his tongue about it. Mr. Thomson—Did you mean to make money creditably or discredibly? A.—I simply said it to him because he was in a bar-room. Roberts told him something about the loss of a vessel in a vague kind of way, and witness had not curiosity enough to ask him what the vessel's name was; advised Roberts to hold his tongue; had no drinks with Roberts; did not ask Roberts why he was going to pitch honor to the winds; only remember half of the conversation. Witness is a native of St. George, New Brunswick; had no trouble about a female passenger he took from Cardenas when he was in command of the *Young Eagle*.

Mr. Thomson—The *Young Eagle* walked off with a pet lamb, then? A.—I took a young lady passenger and her husband from Cardenas to Liverpool in the *Young Eagle*; had no trouble about this. He was arrested in New York, not on a warrant; would rather not say why he was arrested. He has not been to Capt. Tower's house since he came to St. John to give evidence in this case; came to St. John at the request of Peter I. Nevius & Son.

SILAS SMITH was sworn. He said he was a resident of Sackville, N. B., and has been a seafaring man since 1866; has been frequently at the different ports in the West Indies—twice at Cardenas; was 9 months aboard the *Brothers' Pride* as 2nd mate, in 1878, Captain Tower in command. Aboard the vessel the air-streak, as far as he remembered, was two feet below the deck, ran all round the vessel, and was 3 inches wide. On one voyage Captain Tower gave him orders to cover the air-streaks with pieces of boards to keep the coal out. The copper on the vessel was about level with the light water line. On a voyage from a British port to Cuba, she carried 546 tons of coal. The distance between the stern and mizzen mast of the *Brothers' Pride* would be about 26 ft. From the after part of the stern to the lazarette hatch about 4 ft. A cargo of sugar or molasses could be stowed within 8 or 9 feet of the stern post, probably closer. When witness was on board the *Brothers' Pride*, Howard C. Thomas came on board as watchman. Corning and Gallagher are stevedores at Philadelphia. Mr. Corning, witness said, Thomas claimed as his uncle. Thomas told witness it was through Corning's influence he got aboard the vessel; later, Thomas came on board as second mate, witness being promoted to the position of first mate. The second mate belongs to the captain's watch. Thomas would have more intimacy with the captain than ordinary second mates, because he knew nothing about a vessel and required teaching; captain had to be about after Thomas to see that he did his work right. Witness sailed with the

vessel from Philadelphia to Valencia, Spain. Thomas said then that he was 19 years old; witness left the vessel at Sydney.

Mr. Kerr—What was Thomas' character for truthfulness? Would not believe Thomas on his oath.

Mr. Kerr—Why did you leave the ship? A. I did not like Thomas, he told stories and raised a disturbance. Witness left the vessel in October, and said Captain Tower was learning Thomas navigation during the voyage, and that the uncle, Corning, gave Thomas in charge of Tower. Thomas acted like a boy. The captain's manner towards Thomas was not as it would be towards an adult; heard Thomas describe how he went down into the hold and bored holes in the vessel. The vessel was a very stiff ship. A hole bored in the air-streak of the Brothers' Pride could not come out at the 7 ft. draft or light water line of the vessel. If the vessel was loaded holes bored in this location would not appear out of water if the vessel was on the starboard tack. If the holes were in the air-streak, which he thought was above the load line, the holes would not be in the water, the vessel at the time on the starboard tack.

Cross-examined by Mr. Thomson—Witness said the bumkin and main brace were well astern. He did not think holes two feet below the load water line could be seen by a man standing on the bumpkin, holding on the main brace, if the vessel was on a starboard tack. Witness is a brother-in-law of Captain Tower, and was in the Brothers' Pride about nine months. He has seen the captain every day, and talked with him about this case. The Brothers' Pride's air-streak was about 7 ft. above the light water line and about one foot above the load line. Thomas and witness were not very good friends; the captain treated Thomas as an apprentice boy; the captain and witness had a few words about Thomas; Captain Tower always used witness well; was not jealous of Thomas.

Re-examined by Mr. Kerr.—The vessel drew seven feet when she was light, and 14 ft. 2 in. when loaded. It was 11 ft. from the main deck to the light water line, not 11 ft. from the light water line to the air-streak.

CAPT. SAMUEL TUFTS was sworn. He had been asked to give evidence on both sides; is a mariner of 25 years' experience, been to sea since he was 12 years old; has been master for about 20 years. His vessel, the Union T. is a brig.; has been in Cardenas four times and Cienfuegos twice—twenty-six times in all at different ports in the West Indies. The light water line of the vessel is the part the worms most attack; they will attack a vessel all over the parts under water. Have heard of a vessel being strained in her butts. It is a reasonable place for an old vessel to spring a leak at the hood and ends. If the vessel was full of water he did not think she could be run into Jacksonville or Brunswick. [A worm eaten piece of deal was then shown to the court.] If the vessel had 12 ft. of water in her hold, it would be impossible to stay by her longer. In answer to a juror said an ordinary vessel loaded and before a 1 knot breeze would not list more than between 2 and 6 in. The vessel, when she was abandoned, would be in a better position than she would have been 10 hours previous, because she was directly in the current strongest between the Martinella Reef and the Florida coast; if was abandoned in lat. 28.30—she would have been 140 miles south of the Great Isaacs; in lat. 27.30 N., she would have been just outside the



Martinella reef, and 152 miles from the Great Isaacs ; the Great Isaacs afford no shelter that he knew of ; they are simply small rocks, With a four knot breeze blowing a vessel could not approach the Isaacs ; she could not stem the current. The vessel abandoned in 28.30, N. lat. would be 180 miles from St. Mary's Fernandina. Thomas C. Yannes, a ship broker, had chartered him four times at Cardenas ; heard that Yannes kept a cigar store and a bar-room, and some said he kept a billiard saloon. It would take some time for a  $1\frac{1}{4}$  in. hole to fill a barque ; with this hole only running the pumps would suck.

Cross-examined by Mr. Pugsley—Vessels coming out of Cardenas generally stick in the mud ; the Wilson pumps are very good and will throw about  $1\frac{1}{4}$  in. continuous stream. If the holes in the vessel were near the surface the pressure of water would not be as much as if the holes were further down ; did not think the vessel sailing four knots would alter the pressure ; was of the opinion that the pressure would be more when sailing than at anchor. If the vessel was sailing 4 knots, and before a heavy N. E. breeze, auger holes 2 ft. below the load line might be seen by a person standing on the bumpkin, providing the holes were not too much under her tuck ; the water might spout out of the holes 2 ft ; If the vessel was strained by going ashore in Cardenas harbor she would soon commence to leak when outside ; if sailing 7 knots an hour on Tuesday afternoon at 4 o'clock, she would be in north lat. 26.34 and 60 miles from the Great Isaacs ; if in this position, in a heavy gale, with a disabled vessel, he would endeavor to work her down to the Isaacs and run her ashore ; if she had 3 ft. of water in her hold he would shorten under two lower topsails and head her to the eastward ; it would not be impossible to take down the current that sets in between the Gulf Stream and the Florida coast ; have anchored frequently close to the Gun Cays off the Florida coast. Mr. Pugsley then endeavored to prove that the barque could have been conducted from the Martinella reef across the Gulf Stream before a N. E. breeze into the eddy off the Florida coast and taken shelter near the Florida reef. From the position of the vessel on Tuesday p. m., 4 o'clock, she would be 65 miles from the S. E. point of the Bahama Islands. That coast is a deep water coast, and would be good shelter from a N. E. breeze ; was present at the Naval Court inquiry in New York. If the vessel was making one foot per hour and one pump broke he would hardly know what to do with her ; would beach her, if possible, and let her go into the hands of the wreckers and obtain the price of his passage home.

Witness was then re-examined by Mr. D. S. Kerr—If when and where she was abandoned, she had six feet of water in the hold, and was making one foot of water an hour, she would sink before she got to any port, or even beached ; believe it is not lawful for a master to burn his derelict. In answer to a juror witness said a vessel half full of water would roll deeper on the lee side than if she was full of water. In answer to another juror he could not say what would be the additional weight of 12 ft. of water in the Prides' hold.

FREDERICK J. DOHERTY sworn—said the Brothers' Pride was built by him in 1866, at the Marsh Bridge, St. John, the foreman of the yard being Mr. LeBaron Jenkins, who is not in Canada now. The vessel

was built for Oulton Bros. At the time she was built she had only one deck ; English Lloyds' agents, Tucker and Lapthorn, examined her, and she classed A 1 5 years, the highest class given for spruce vessels at that time ; the air-streak in the vessel would be about a stringer and two clamps below the deck ; the streak would be about three feet below the deck 'midships, and would taper off from the deck astern about two inches ; the vessel had a pretty good shear fore and aft ; the air-streak was about 3 ft. 10 in. below the deck amidships, and 2 ft 10 in. below fore and aft ; the deck was about four inches thick ; this is the upper air-streak ; there was an air-streak running forward 15 ft. from the stern-post, located down by the keelson and did not run all round the vessel. Q. At 19 ft. forward from the stern how far below the deck would the air streak be ? A. I cannot answer to an inch, but think it would be about 2 ft. 10 in. This would be from the lower part of the deck. Taking the load line 14 ft. and the light water line 17 ft., the air-streak would be above the load line 2 ft. ; did not know any place between her timber  $1\frac{1}{2}$  ft. apart ; widest space between timbers 'midships would not be over 2 inches. The Brothers' Pride was a lean vessel aft, and her timbers in the stern were not an inch apart ; remembered this because he had a difference of opinion about it with the inspectors ; the second air-streak was put in because the timbers were so close together ; her timbers were 9 in. in thickness ; an auger of  $1\frac{1}{4}$  in. size would strike the timbers if a hole was bored through either air-streak ; from the location of the upper air-streak witness could not see, from the way she flaired up aft, how the hole was bored ; the Brothers' Pride was lean under her quarter and light aft ; forward she had a big shear, but not so much aft ; she had a bluff bow, her floor timbers were about 12 inches ; was never to sea in her. In answer to several jurors, witness said the air streak was about  $3\frac{1}{2}$  to 4 inches wide. The vessel having a 14 ft. draft, a boring through the air-streak would come out two feet above the load water line. [The witness drew a plan of the air-streaks and explained it to His Honor, the counsel and jury.] The deck did not follow the shear of the vessel ; the deck had no rise aft. In the air-streak there were chinks about 18 inches apart, could not say the chinks were under each knee ; chinks might have been under the beams of the deck. They were about four inches wide and six inches long and had nothing to do with the frame. Cross-examined by Mr. Thomson. He built the Royal Sovereign in '65 and has not built a vessel since the Brothers' Pride. He is a member of the Portland Town Council ; had a model of the vessel, but it was destroyed in the great fire of 1877 ; recollects and has an accurate recollection of 14 years ago, that the air-streak was  $3\frac{1}{2}$  feet below the deck. She drew about 5 ft. when she was launched ; knew nothing of the load-line ; aft the air-streak would be 2 ft. 10 in. below the stern ; he was at Mr. Kerr's office ; he answered Mr. Kerr some questions about evidence.

Mr. Kerr re-examined witness, but made no new points of importance.

CHAS. NEVINS was called. He made the spars of the Brothers' Pride ; could not state exactly, but the vessel's air-streak was about 3 to  $3\frac{1}{2}$  ft. below the deck amidships ; at about 20 ft. from the stern post the air-streak would be about  $2\frac{1}{2}$  ft. from the deck ; is not positive. The shoeing of a vessel, the Brothers' Pride size, would be about  $2\frac{1}{2}$  to 3 in. and



the keelson 12 to 13 in. in depth. He owns  $\frac{1}{4}$  in the barquentine Jane Wright, 418 tons register; she is 13 ft. hold. He remembers the position of the timbers aft in the Brothers' Pride; they were very close, probably about 1 in. apart, but could not have been  $1\frac{1}{2}$  ft. apart, she being a wooden ship. Between some of the timbers a  $1\frac{1}{2}$  inch auger could be run; chinks are put in between the air-streak to support the deck in case of a heavy deck cargo. The dead weight capacity of the Jane Wright is 654 tons; knew a vessel to sink at the wharf, Cape Breton, she having been eaten through by worms; has seen worms 2 inches long and an inch in diameter taken from the hulls of vessels. [The worm-eaten piece of deal was again shown to the court. The holes by which the worms made their entrance into the deal were very small and hardly noticeable, but the heart of the deal was literally scooped out.] Has seen some of these worms, he described, alive; thought that when the worms got in the planking above water they died. In a heavy chopping sea a vessel will strain most amidships; a plug could be put in a  $1\frac{1}{4}$  inch hole bored in a vessel's stern below the water line; it would be difficult to get a plug in, but with a tapered edge it could be done. The rush of water into the hold would make a noise that could be heard, he thought, all over the vessel; in launching one of his vessels, 625 tons, a  $\frac{7}{8}$ th inch hole was left open in the hold of the vessel aft near the keelson; was on the deck at the time, and shortly after the launch heard the rush of water from below. The vessel was launched at 10 o'clock, a. m., on Saturday and on Monday morning she had  $3\frac{1}{2}$  feet of water in her, the water coming through this hole.

Mr. Kerr—What did the Jane Wright cost, built and equipped for sea in 1873? Mr. Thomson objected. The value of a vessel at this time had no relation to the case. His Honor said that the value of a vessel in 1879 would be applicable; the value of a vessel built six years previously would not be evidence.

Cross-examined by Mr. Thomson:—He had not intended to mislead the jury by any of his statements. At sea he thought the rush of water through the holes in the Brothers' Pride, could have been heard on deck if the lazarette hatch and the lazarette hold hatch were open; the noise of creaking ropes and whistling winds might have hindered those on deck from hearing the rushing of the waters below; could not say that the clamps and stringers of the Brothers' Pride have a 2, 4 or 6 inch taper amidships; would swear that the timbers between the forward and stern posts of the Brothers' Pride were from 1 to 4 inches apart; had a personal inspection of the vessel when she was building, and felt pretty sure of what he was saying; down near the keelson the timbers were sometimes further apart; if a vessel lay at Cardenas three or four weeks and made no water during that time, witness would be surprised to know that she became water-logged when two days out to sea; if the Brothers' Pride drew 14 ft. with 517 tons, she would probably draw 2 ft. more with 200 tons additional cargo. Mr. Kerr then re-examined the witness. No additional particulars were ascertained, however.

JOHN CALHOUN was sworn, and examined by Mr. D. S. Kerr. He resides in Carleton, and has been a mariner since 40 years ago, first start-

ing out as cook; has never been in Cuba, and has no acquaintance with Captain Tower, the accused. The ship John Parker was built in 1857. Witness related his experience in this vessel, how she would suddenly become tight, and as suddenly become leaky; ripping off the copper near the keel, the leak was discovered by the carpenters, who said she had never been caulked in this one spot, and over this defect she had been coppered; had seen another vessel that had been coppered over an open butt; it is a probable place for a vessel to leak at the hood and ends. A vessel coppered and thoroughly overhauled in 1876 should be in fair order in 1878, or two years later; if her seams and butts are weak the copper will not hold the oakum in its place. Mr. Kerr—Could a hole bored in the air-streak come out at the metal or 7 ft. draft of the Brothers' Pride? Mr. Pugsley objected to the question being put unless allowed to ask the witness if he knew where this particular air-streak was. If Mr. Kerr would put an hypothetical case, the question would be admissible. In answer to the question witness said the boring in the main air-streak could not come out at the light water line or top of the copper, not if she was coppered at the 7 ft. draft. There is no invariable rule regarding the location of air-streaks. The upper air-streak in the B. P. would be about  $2\frac{1}{2}$  to 3 ft. below the deck beams and according to the location of the clamps. It would be from the deck flooring about 3 ft. 6 in. to 3 ft. 9 in. Boring through an air-streak 2 ft. below the deck beams could not come out at the copper or light water line, nor if it was 3 ft. below. If the vessel's hold was 13 ft., a boring 2 ft. below the deck could not come out at the load line; never saw nor built a vessel with the timbers below the deck, abaft the mizzenmast, 2 ft. apart. About 19 ft. from the stern the timbers are generally placed as close together as possible; they are not always so; the space between is left for air and salting. He never saw a vessel with timbers  $1\frac{1}{2}$  ft. apart. From the inside to the outside of the Pride's hull would be about 18 or 19 inches; it would be impossible to bore four holes  $1\frac{1}{4}$  in. size between her timbers.; hurricane deck vessels cost more than single deck vessels of the same length and beam, probably one-third more; the noise of water coming through four holes into the hold of a vessel, the lazarette and lazarette hold hatches open, would be heard on deck at least by the man at the wheel.

To a juror—If a vessel was coppered up nine feet, a hole three feet below the main deck beam would come out about five feet above the light water line. If a man was sent into the hold to look after the leak it would be impossible for him to be there and not hear the rushing of water into the hold through a hole  $1\frac{1}{4}$  inch size. The vessel's rolling would not prevent a man from finding out such a leak if he was in the hold looking for it; if there were five feet of water in the hold the water would swash against the main deck.

To Juror Ruddock—Witness said there was often a wane of 12 inches in a vessel's timbers. Continuing he said, waness do not generally come in the air-streak; it is an error in master workman to allow butts to come in the air-streak; frequently a piece of wood is inserted in the wane; has seen waness or defects in the timbers of a ship in which three or four  $1\frac{1}{4}$  inch auger holes could be bored abreast of one another, but he never did



in the air-streak or upper part of the ship; the air-streak is generally kept clean and nice for inspection.

Cross-examined by Mr. Alward—Wanes are frequently in the timbers of a vessel; has never seen crooked timbers in a ship; a wane in the air-streak never increases the space between the timbers; could not say that he had ever seen a wane all the way through the timbers; could not swear that he ever saw a wane of six inches in the timbers of the air-streak; has seen wanes in the timbers of an air-streak that had not been pieced out; has seen side wanes pieced out; saw one in the Harry Bailey, now being overhauled on the blocks in Carleton; has seen wanes within a foot of the air-streak but never in the air-streak. It is not generally considered that wanes in the timbers injure a vessel.

Mr. Pugsley—Could four  $1\frac{1}{4}$  in. auger holes three in line with each other and one a little above, be bored in a space between timbers of 6 in., each hole one inch apart? A. Two of the holes would have to be bored very close to the timbers. The chocks in the air-streak are generally from 12 to 16 in. size and  $5\frac{1}{2}$  ft. apart in a vessel, no matter what her size; if the auger hole was bored and oakum put in the skin, sufficiently secured so that the water could not carry it away, the rush of water could not be heard on deck if the hatches were open; if the pumps were working they would make a noise, but not in the hold. The water coming in the hole would make considerable splash, but could hardly be heard on deck if the hatches were down; if a party went down into the forward part of the hold, and this hole was running, he would hear it, even if there was considerable water in the hold; independent of the swash the noise of two running holes could be heard in the forward part of the hold.

Re-examined by Mr. Kerr witness said he had seen spaces in vessels' timbers further apart than two inches. To the best of his judgment and recollection he has seen timbers in the stern part of a vessel five inches apart. The Harry Bailey was an unusually open ship; her timbers were small; the space between timbers abaft the mizzenmast should not exceed four inches.

Mr. Kerr—Supposing the mate went down into the hold on Tuesday afternoon when it is stated the four holes were running, and when there was no accumulation of water in the hold to swash, could there be any difficulty of the mate's hearing water run from the holes. Witness said there could have been no difficulty. With the permission of the court Mr. Pugsley put a few additional questions. It would make no difference in the roll of the vessel if she was on her starboard or port tack, the water inside would swash all the same; oakum could be put in the skin of the vessel so as to be firm enough to resist the force of water; proper tools would be required; it would be difficult to make the oakum fast; the oakum if put in the skin would be below the holes altogether.

To Mr. Kerr witness said he did not see what effect the oakum would have; if the hole was bored in the air-streak no oakum could be kept against or in the hole without a prop or fastening of some kind.

To Juror Dixon—If an auger hole was being bored below decks in the stern, and he (witness) was at the helm he would recognize the sound of boring from below; it would require considerable force to insert

a plug in one of these holes, and the noise would be heard all over the vessel.

ROBERT JENKINS was sworn: He is 56 years old, and for 46 years has been shipbuilding; has built or been concerned in building about 60 ships; LeBaron Jenkins, a brother of witness, superintended the building of the Brothers' Pride; she was built at the Marsh bridge in the old McDonald yard, under the inspection of Mr. Tucker, Mr. Laphorn, and Mr. Bayzant, agents for English Lloyds; never knew a vessel to carry in dead weight double the amount of her registered tonnage; has known vessels to carry nearly double their tonnage in dead weight. According to his recollection the Brothers' Pride's timbers were from 2 to 4 inches apart; remember that the Brothers' Pride had two streaks under her beam—one stringer and clamp coming between; the top of the air-streak was 19 or 20 inches from the beams, amidships; aft, abaft the mizzenmast, it would be about 16 inches; the beams were  $8\frac{1}{2}$  in. and her deck 3 inches; then the streak would be about 2 ft. below the under flooring of the deck; her ceiling was about 8 inches; from the main hatch to the bumpkin she had a shear of 20 inches; the main deck beams had a six inch crown; the distance between the shoe and the inside of the ceiling is about 42 inches; from the covering board to the bottom of the shoe, witness said, after calculating on paper, was about 17 ft. 4 in. amidships, and taking in the shear aft, she would be 19 ft; at 15 ft. from the stern she would be 18 ft. 6 in. deep. If a boring was made 19 ft. forward of the stern in the air-streak, and the vessel loaded drawing 14 ft. the hole would come out 18 or 20 in. above the load line. Witness produced a plan of the vessel he had made at his own instance; took the facts upon which he drew the plan from his head; took the size of the timbers from Lloyds' books. The plan was shown and explained to the jury by the witness. The witness proceeding, endeavored to give the vessel's dimensions from memory, but the court and Crown counsel objected to witness refreshing his memory in this particular from the contents of the register of the vessel. Witness said from memory and from calculations, a boring out through the air-streak would come out above the load line; from calculation the air-streak was about 18 in. above the load water line. According to her shear he gleaned this measurement; never measured her shear; never made any actual measurement of the Brothers' Pride; made the measurement from his memory and judgment. If the Pride was on her starboard tack she would be listed about 5 inches; has never seen timbers  $1\frac{1}{2}$  feet apart in a vessel; boring out through her light water line would be about 7 ft. above the light water line; if the holes were bored through the side, 4 ft. below the load line, they could not have been bored in the air-streak.

Cross-examined by Mr. Alward—He was in the Brothers' Pride when she was building; from his memory he would swear the air-streak was 18 in. above the load line; this was from guess work; a man's judgment is guess work; could not say he never measured a timber in the Brothers' Pride; never measured a timber in the Brothers' Pride.

Mr. Alward—Then your statements are guess work? A. You may call it guess work if you please. He went into the hold of the Brothers' Pride for curiosity; did not go hunting for an air-streak; did not obtain



any facts from Mr. Charles Palmer about the Brothers' Pride ; Mr. Kerr and Charles Palmer were at his house ; he took the timbers from Lloyds' book. Three holes,  $1\frac{1}{4}$  in. size, with 1 inch between the holes abreast of each other, would take up a line space of  $5\frac{3}{4}$  in. ; if another hole was added above  $\frac{1}{2}$  in. distant from the others, the space in line would be  $6\frac{1}{4}$  in. ; his measurement of the beams is all guess work.

Re-examined by Mr. Kerr—Has no interest of any kind in the case ; was interested in the building of the Brothers' Pride, because his younger brother was foreman in the yard at the time and witness frequently visited the yard to give his brother advice ; was on board the Brothers' Pride once a week when she was building, and saw her from a distance every day. If there was a space of  $1\frac{1}{2}$  ft. in the timbers of the air-streak the vessel would not pass Lloyds. A vessel is built according to Lloyds' rules ; could timber a vessel to within an inch of all Lloyds' measurements ; never actually measured any of the Pride's timbers ; from his experience and knowledge as a shipbuilder, he could tell the size of her keel plates.

ALPHONSO ROUSE was sworn and examined by Mr. D. S. Kerr. He is a ship master of 8 years' experience, having sailed to Cuba 8 times. Witness was second mate of the Brothers' Pride in 1869 ; sailed in her to Scotland, thence to Portland Me., thence to Bathurst, N. B., where he left her ; she was a good working and carrying vessel, and a stiff ship that would not list more than 12 in. If she was in the Gulf Stream on Tuesday, 6th May, 1879, at 8 p. m., N. lat. 30.30, and leaking 1 ft. per hour, she could not have been got into any port ; it is about 73 miles from Cardenas to Havana ; to Matanzas 47 miles ; the vessel in this state and one pump disabled could not be taken to any of these ports ; if drawing 14 ft. she could not enter Jacksonville harbor, but could Brunswick harbor ; the coast of Florida is a nasty place ; if the vessel was in the condition described he would have abandoned her ; was in the Kate Upham when, loaded with lumber, she had 9 ft. of water in the hold ; then experienced difficulty in keeping the men at the pumps. From calculation upon the chart witness said the Brothers' Pride would have been in about 28.30 N. lat. on Tuesday night. When second mate of the Brothers' Pride in 1869, he tore off the battens off her air-streaks while washing out the hold ; the air-streak ran aft the pointer ; she was a half-round stern ; the pointer was about 12 ft. from the stern-post ; the upper air-streak, at a location abaft the mizzenmast, would be about 15 in. below the deck ; the sweep of the air-streak below the beams was about 15 in. ; the air-streaks were about 4 in. wide ; each air-streak was about 2 or 3 ft. long, and then a chock between them ; some of the chocks were under the iron knees ; her beam was 9 in. deep ; the air-streak was from 15 to 20 in. under the beams ; she was three feet from the outside of the planking to the shoe ; from the inside of the skin of the Brothers' Pride to the outside of her planking was about 22 in. ; the inside ceiling is the skin of the vessel ; the skin is about 6 in. thick, the timbers, very small, would be 10 in. and the outside planking 6 in. ; the air-streak was 10 in. deep ; if no help was in sight it would be useless to put up a signal of distress ; the Florida coast is a bad one to land upon ; the Brothers' Pride's position was in the centre of the Gulf Stream and as a derelict she would have been very dangerous to passing vessels ; taking her draft at

14 ft., holes bored in her upper air-streak ought to come out above the load line, perhaps a foot ; the holes being on the starboard side, and the vessel being on the starboard tack, her list would bring the holes three inches higher above the water considering how she was loaded, that she was a stiff ship, and before an ordinary breeze ; if she was under full sail she would list, probably, two inches. A N. E. wind generally kicks up a nasty sea in the Gulf—the wind and stream being in opposition to each other ; it would be wise to take in the topgallant-sails if the wind was blowing hard and the vessel leaking ; shortening sail would help to lessen the leak ; he remembered the lazarette and lazarette-hold hatches ; the water must have been coming very slowly through the holes to admit of oakum remaining in them ; if there was any force at all the oakum would be washed out ; if there was a hole being bored below in the stern, the lazarette and lazarette-hold hatches being open, the sound of the boring ought to be heard by the man at the wheel ; if the hatches were open, the water rushing through the holes ought to have been heard on deck. The pumps would suck with one hole running of the size mentioned.

Cross-examined by Mr. Pugsley—Witness said he has chiefly been in the employ of Mr. A. L. Palmer, but is in command of no vessel just now. Cape Florida would be about 25.40 N. lat. Hillsboro Inlet would be between 15 and 20 N. lat. ; between Jupiter Inlet and Cape Canaveral there appears a reef on the chart ; the coast from Jupiter Inlet to Cape Canaveral is more dangerous than the coast from Cape Florida south ; knew nothing more about it than the chart indicates, and could not say there was a sandy beach between Cape Florida and Jupiter Inlet ; the chart show an inlet named Indian River. There are no lights to guide the mariner between Cape Florida and Jupiter Inlet. There is nothing to be gained by going where there are no harbors ; would sooner run ashore on the rocks than in among the cays. In lat 26.30 the distance between the cold wall of the Gulf Stream and the Florida coast is about 16 or 18 miles. There is one lighthouse indicated by the chart between Capes Canaveral and Florida ; between Cape Canaveral and Jupiter Inlet the water, 10 miles off shore, is five fathoms deep ; New River Inlet would be 13 miles from 26.6 N. lat., 79.56 W. lon. and 12 miles from Hillsboro Inlet ; from this position New River Inlet would be S. W. and Hillsboro Inlet N. W. From the Brothers' Pride's position on Tuesday afternoon, Jupiter Inlet would be about 25 miles distant ; the Great Isaacs would be E. S. E. of her position ; did not consider the anchorage there good ; would not like to be inside the Bahama Banks in a N. E. storm.

Mr. Pugsley—What would you do if in a vessel having 3 ft. of water in her hold, a cargo valued at \$38,000, one pump disabled, a gale of wind blowing and a heavy sea ? A. The first think I would do would be to see if I could master the leak or keep the pumps under control ; would not leave the pumps under any consideration ; even if he had only one pump and a heavy N. E. wind blowing he would stick to that pump ; would keep the vessel on her course until he could get the pumps under control and could do nothing else ; if he put her on a lee shore the chances of the crew's safety would be lessened. After getting the pumps



under control he would consult his chart as to a place of shelter ; after he knew her destruction was inevitable he would consult his chart ; would not give her up even if she had 9 ft. of water in the hold ; would stick to her until the last. The log book was shown to witness and he pointed out that it had not been kept properly between April 27th and May 4th, 1879 ; between these dates there were no entries. The wind being east, no vessel could head N. by N. E. ; the best she could do on the starboard tack would be N. by E. If he could not free the leak he would not, on any consideration, go on a lee shore unless positive he could find a harbor there ; would not attempt to make Jupiter Inlet with the wind N. E., in a vessel in that condition ; was positive the air-streak in the Brothers' Pride was about 18 in. below the beam ; could not tell anything about the spaces between the timbers at the air-streak ; in the timber-streak he could get his hand between the timbers. The force of water through an auger hole in the bow and one in the stern would be about equal, even if the vessel was sailing.

Re-examined by Mr. Kerr—Would not have a mate that would keep a log like the one exhibited. Taking up the log book witness said the log was written up from April 27th to May 4th in one space of 12 hours ; the entries should be made ashore as well as at sea ; the Board of Trade regulates the mate's log. Witness pointed out other defects in the log book, and said each page represented 24 hours. He explained the log to the jury, and said between the dates of April 29 and May 4 there were no entries. While showing it to the jury, however, witness said he had discovered the missing entries, but that they were somewhat mixed up. Mr. Kerr, pointing to a place in the log book, asked witness if it was nautical or civil time. Witness said from the shape of the log he could not make head nor tail of it and handed it back to Mr. Kerr. If the log commenced on Tuesday afternoon it should be 2 a. m., the commencement of a nautical day.

To His Honor—Witness said the log should show what took place every hour, not every two hours, as the book indicated ; the last entry is up to noon civil time on Tuesday ; there is a space for every 12 hours in the log pages, though in this log 24 hours is entered in each 12 hour space.

ROBERT MCBRIDE was sworn. Mr. John Kerr examined the witness who said he is a ship carpenter of 27 years' experience ; he worked on the Brothers' Pride, and helped to frame one side, regulate the frame and ribbon her ; could not speak of her shear ; she was a large framed vessel for her size ; her timbers were 2 to 4 in. apart ; the timbers 19 ft. from the stern were not more than 4 in. apart ; none were  $1\frac{1}{2}$  ft. apart ; helped put a clamp and stringer in the starboard side of the vessel ; the stringer ran all round the vessel and amidships was about 10 in. thick ; a streak of clamp came after that ; from the top of the stringer to the bottom of the clamp was about 20 in. ; the bottom of the clamp was the top of the air-streak ; abaft the mizzenmast the air-streak was about 18 in. below the lower edge of the deck beams ; abaft the mizzenmast the side of the vessel from inside of ceiling to outside of planking was 17 to  $17\frac{1}{2}$  in. thick. A hole bored in the air-streak could not come out at the light water line ; it would not come out under water, the vessel drawing 14 ft. ; it would probably come out 18 in. or 2 ft. above the 14 ft. draft or load water line.

Cross-examined by Mr. Alward—Witness measured timbers in the Brothers' Pride, the top timbers to the gunwale from the second footing. After the lapse of 13 years he remembers the size of the timbers which he had to decide and measure. Her foothooks were 10 in. ; he speaks from a distinct recollection ; has built 25 to 30 vessels ; remembers the Brothers' Pride because Doherty, the builder, Coun. Doherty, was a funny man, took a little beer occasionally and acted ridiculous in the yard. The stringer was 11 in. deep, he remembers as well as if yesterday ; never put an axe in the clamp and could not give its width ; thought the air-streak was 20 in. below the beam. From the top of the deck to the top of the air-streak was  $30\frac{1}{2}$  in. or thereabouts.

GEORGE DICK was sworn. He is a ship master and has had a captain's certificate for about 20 years ; carried a load of sugar from Cardenas and a cargo of melado from Matanzas to New York. To go from the vessel to the shore, the captain always takes the second mate with him. It would be reasonable for the captain to go ashore on Friday night to settle his business and not return until Sunday night. In coming out of Cardenas before a free wind witness would sight Salt Cay bank ; if the wind was N. E. or E. N. E., he would haul as close as he could to the wind ; rats will gnaw the seams so as to cause a vessel to leak ; vessels frequently leak at the hood and ends. A vessel lying a couple of months in Cuban ports under a hot sun would have the oakum in her seams dried up considerably and would be apt to leak. If the vessel was leaking it would be wise to shorten sail ; if the vessel was in 27.30 N. lat., and 79.56 W. lon., with 8 ft. of water in the hold, she could not have been got into any port the leak still gaining. Witness said the crew would be justified in leaving a ship with 8 ft. of water in her hold ; the vessel in this condition, with a cargo of melado on board, would be apt to sink suddenly. If the pumps were broken 50 miles from any port, and the vessel gradually making water and overpowering the pumps, witness would not have attempted to beach her ; with 10 ft. of water and 32 tons of ballast in her she would be likely to go down at any moment ; with 10 ft. of water in her hold he would have considered her to be entirely lost, and abandoned her as soon as he could ; the master of such a vessel could not, no matter how interested, have done anything to save her.

Mr. Kerr—Can you form any idea of the sound that would be produced by water running through four auger holes in the bottom of a ship ? Mr. Pugsley objected to this evidence, the witness having no scientific knowledge of the force of water.

Mr. Kerr contended that the witness being a mariner, was a practical man, and could give an idea on the point.

His Honor admitted the evidence, witness being a master of a vessel, and as the jury would probably form an opinion upon the point, they might gain some assistance from the opinions of mariners. Witness resuming said, the noise could be heard on deck, at the wheel, in the cabin and on the main deck. If the mate's room was on the same side of the ship, and almost above the holes, the mate should hear the water running without any difficulty. A derelict would be dangerous to navigation. He is acquainted with Captain Tower, and has known him about 13 years, and has always looked upon him as a respectable, prudent and faithful shipmaster.



Cross-examined by Mr. Pugsley—Witness said: “All hands at the pumps” meant both watches: “People at the pumps” was a single watch. A vessel of 442 tons, with 10 ft. of water and 714 tons of melado in her hold, would sink quickly; a vessel could not, he thought, get into Jupiter Inlet. If in the condition and latitude alleged, it would have been best to go on with the current of the stream; she might have reached Doboy, 200 miles distant, and would have had more chances of reaching Doboy than any other port; she could not have sailed against the Stream; it is not safe navigating in the cold wall of the Gulf Stream with a heavy draft vessel. Witness was then re-examined by Mr. D. S. Kerr, who adduced no new points.

RICHARD POWERS was sworn. He has been a resident of St. John for about 35 years, and is a stevedore of 22 years’ experience; stowed the Brothers’ Pride in St. John, Richibucto, Bathurst and Shediac; always loaded her with lumber. Aft the mizzenmast or 19 ft. from the stern the air-streak was about 15 to 17 in. under the deck beams, which were 10 in. thick. The air-streak was about  $3\frac{1}{2}$  in. wide; if the vessel’s load water line was 14 ft. a hole bored through the air-streak would come out 20 to 23 in. above the line; aft the mizzen she was 14 ft. deep; amidships she was 12 ft. 9 in. to 13 ft.; he cleaned her air-streak out twice; she carried between 11,000 and 12,000 shooks; with the shooks she drew about 13 ft. 10 in. aft and 13 ft. 8 in. forward; she would carry 155,000 standard, and in the lower hold and between decks and on deck she carried 47,000 standard. When he loaded her in Bathurst she had 20 tons of ballast in the hold aft, near the stern, to trim her; when loaded at Shediac and Bathurst she drew about 13 ft. 10 in.; she had considerable shear; witness lived, slept and ate in the Brothers’ Pride’s cabin at different times for 10 weeks; there was no trouble in stowing her 4 tiers aft and 4 tiers forward bilge and guntling stowage. The w. c. pipe would be on the wash, the vessel drawing 14 ft.

Cross-examined by Mr. Alward—From actual measurement the mizzenmast was 50 ft. from the main hatch; amidships the air-streak was 24 in. below the deck, and aft the mizzenmast 15 in. below the beam; there was a taper in the air-streak from midships to mizzenmast of 9 in.; did not hear Mr. McBride say there was a taper of only 1 to  $1\frac{1}{2}$  in. at these points; have attended this trial nearly every day since it began, attending at the request of Captain Tower for whom he has no particular regard; is not paid to attend the trial.

Re-examined by Mr. Kerr—Witness said he was subpoenaed to appear.

JOHN MAHONY was sworn. Mr. Kerr endeavored to compare, through witness, the value of the Brothers’ Pride with other vessels. Mr. Pugsley objected, and His Honor was disinclined to receive the evidence, Mr. Kerr arguing that Judge Palmer had been accused of largely overvaluing the Pride, and he wanted to show that the vessel was only fairly valued.

Mr. Kerr—What would it cost to build a vessel, hull and spars, of 600 tons carpenters’ measurement? Mr. Pugsley objected to the question being put as carpenters’ measurement, and His Honor rejected the question. Mr. Kerr asked witness what it would cost to complete such a vessel for sea. This question was also rejected, the court reserving the

point for Mr. Kerr, who said he asked carpenters' measurement, because it is the standard by which vessels are built in St. John.

Mr. Kerr what would it cost to put a hurricane deck on a vessel? Mr. Pugsley objected. His Honor said he would receive it. Witness said he spent \$6,000 on a vessel of 339 tons register on which he put a hurricane deck, new spars, tore her wales off, and cut down timbers; after repairs she registered 464 tons.

Cross-examined by Mr. Pugsley—He had a conversation with Judge Palmer in the summer of 1879 about building a ship; the judge, in the following fall, though he said he had the timbers concluded not to build.

Mr. Kerr could not see that this was evidence concerning his client. It was especially inadmissible coming through a third person. And if to corroborate Howard C. Thomas' evidence, he did not wish to hear that young man's name mentioned. It filled him with horror.

The evidence was declared relevant, however.

Re-examined by Mr. D. S. Kerr—Witness said he had applied to Mr. Chas. Palmer last summer for a vessel to build.

HUMPHREY T. GILBERT, Police Magistrate of the city of St. John, was then called and sworn. Mr. John Kerr proceeded to show by witness that the fact of firing the vessel was not mentioned in the information made at the Police Court against Captain Tower. He wished to convey to the minds of the jury that it was possible the story of firing the vessel, not adduced until the preliminary examination, had been "cooked up" after the informations were made.

Mr. Alward said it was impertinent of Mr. Kerr to throw out insinuations against Mr. Cleveland, just as though that gentleman would induce the witnesses to perjure themselves.

Mr. D. S. Kerr said there would be facts, not insinuations, adduced before the case was through, anything but complimentary to the prosecution. After a brief cross-examination by Mr. Alward,

GEORGE HENDERSON, Police Clerk, was called and examined by John Kerr—Witness said he was a resident of Annapolis, N. S., for a number of years and left there when 17 years old. He heard Hall, the steward of the Brothers' Pride, say he lived in Granville, and that he lived near the bridge between Annapolis and Granville. There is no bridge there, and was not ten years ago. There is a bridge at Bridgetown 15 miles above Annapolis. Mr. Kerr then proceeded to question witness upon the evidence taken at the police examination.

Mr. Pugsley objected, stating that the evidence should be produced and submitted as evidence in this trial. After some parley between the counsel the evidence was read.

Cross-examined by Mr. Pugsley—He left Annapolis N. S., on the 1st day of July, 1869. There is a ferry between Annapolis and Granville.

Mr. Pugsley—Did you hear Hall, the steward, speak of this ferry? A. I heard him speak of Granville Ferry, the name of the village. Continuing, witness said there is a bridge at Allen's creek a few miles from Annapolis. There are two families of the name of Hall in Granville—Samuel Hall and Reid Hall. Samuel Hall had no sons, Reid Hall had one. The steward of the Brothers' Pride was not Reid Hall's son. On the Annapolis side there was Samuel Hall who had sons, Edward, Harris,



Lawrence and Samuel. The steward was neither of those. Witness remarked that Hall, the steward, had referred Mr. Kerr to Captain Lawrence Hall of Annapolis, while giving evidence at this trial. The Judge remarked that Hall, in his testimony, had said there was a bridge across the Digby River between Annapolis and Granville Ferry.

Mr. Pugsley—Witness do you not recollect that a number of years ago Captain Lawrence Hall brought home with him to Annapolis a small Chinese boy? Witness—I do not.

To a Juror—Witness said the bridge across the creek connected the Digby road. There were no mills thereabout.

On being re-examined by Mr. Kerr, witness said the creek bridge was in Annapolis village.

GEO. H. OULTON was then sworn. Mr. Kerr conducted the examination of witness, who said he and Charles H. Oulton built the Brothers' Pride. Jenkins & Doherty were the contractors and the contract price for hull and spars was \$24 a ton, carpenter's measurement. She was about 500 tons carpenter's measurement. She was built under the most rigid inspection of Lloyds' survey. He remembered within three or four inches the location of the air-streaks. The timbers in the vessel were large for a vessel of the Brothers' Pride's size. They were larger than Lloyds' rules called for, and large enough for a 600 ton ship. It was his impression there was not a timber in her six inches apart. The timbers aft would be closer than amidships. Personally he could not say what a vessel like the Brothers' Pride would cost now. After being built she was in the Southern, West India and English trades. Witness put a hurricane deck on her a year after she was launched. This improvement cost between £300 and £400 sterling. Witness and his brother were owners of her until the fall of 1872. He put no other improvements on her. Her wear and tear for the year he could not state. She was re-classed in 1871, he thought for 4 years. Captain Tower entered witness' employ in 1866, and witness always considered that Tower performed his duty well. Witness built the barque M. A. Oulton for Captain Tower, and if he had not been satisfied with Captain Tower he would not have built this vessel for him.

Cross-examined by Mr. Alward—While building the Brothers' Pride he saw her every day, particularly Sundays. As owner, witness would not attempt to state the exact size of the timbers in the Brothers' Pride.

Re-examined by Mr. Kerr—Witness said the Brothers' Pride was a profitable vessel and had large carrying capacity for her size.

H. R. RANNEY, Insurance Agent, took the stand. He said in owners asking valuation some decrease it as the vessel grows old, while others continue the valuation; if a vessel underwent extensive repairs in St. John the underwriters would know it. It is usual for a vessel to be valued differently in different offices. If a vessel of 442 tons, 13 years old, was repaired to the extent of \$12,000 when she was 10 years old, a valuation of \$16,000 would not be exorbitant; if the witness had any doubt of the value of such a vessel and she was in the port of St. John he would have her inspected. It is usual to insure advances. Valuations are entirely a matter of agreement.

Mr. Kerr—Did you know the Jennie Armstrong and how she was

insured? Mr. Pugsley objected to the question as irrelevant. Mr. Kerr said he wanted to show that the Jennie Armstrong had been insured for three times her value or \$16,000, and that no suspicions of wrong were ever hinted.

Mr. Thomson, who was alluded to as having insured the Jennie Armstrong, said that the owners held the policies for insurance for \$16,000, and he (Mr. T.) held the mortgage. The vessel, so far from being lost and the insurance being paid, put back to a port in Mexico, and the insurance was not paid. He said he had produced all the policies Mr. Kerr had subpoenaed him for yesterday, and did not know how any private transaction of his could affect this case. He wished now to set himself right before this court and community. He had, in an hour of weakness gone security for Mr. John Armstrong, and by that act of kindness between \$30,000 and \$40,000, half of the earnings of his life-time, were swept away. Mr. Armstrong, as security, gave him mortgages on two vessels—one the Jennie Armstrong. He held the applications for insurance and consulted Mr. Ranney concerning them, then took Ranney's advice and acted upon it. The vessel put back to a port in the Gulf of Mexico in a storm and was eaten up by wreckers, his loss being \$8,000. He felt that Mr. Ranney must have given this information to Mr. Palmer, and he only hoped that Mr. Ranney could clear his mind of this impression. These were the circumstances, and when the constable entered his sick room yesterday with a subpoena he at once procured all the papers in connection with the matter, and only hoped he would have the opportunity to go upon the stand and give a statement of the facts, for this was the first time that an insinuation had been thrown out against his character.

Mr. D. S. Kerr replied, and assured Mr. Thomson that no insinuation had been intended. He was authorized by Mr. Palmer to state that neither Mr. Ranney nor any person connected with him gave the information.

Mr. Kerr—What is the highest insurance you ever made on a hull in this city according to valuation, supposing the hull to be 600 tons carpenter's measurement, 13 years old? Mr. Thomson objected. His Honor could not see how it could be proved by any particular circumstance and rejected the question.

Mr. Kerr—Have you ever known vessel property to be doubly insured without fraud? A.—I cannot say it frequently happens. Does it ever happen and how often? I cannot say how often. In your own practice how often has it happened in the last two years? Some valuations I would accept where other agents would not. Witness continued: Advances on hull are not generally insured as disbursements; it is a very common thing to insure ordinary disbursements as advances on freight; moneys advanced on extraordinary repairs are sometimes insured as advances on hull; a vessel extensively repaired in 1876, and owing a large bill in England, and the ship's husband paid her disbursements here, and all freight allowed to go towards paying this bill for repairs, it would be customary for the owner making such advances to insure them.

Mr. Kerr—If \$5000 insured on a vessel valued at \$12,000, and



\$8,000 insured on a vessel at \$16,000, and \$5,000 on a valuation upon the same vessel of \$22,500, would that insurance be paid?

Witness said it would depend upon the language of the policy. From his knowledge of marine insurance in St. John, an underwriter has such means at his command as to know the approximate value of a vessel; that he would know at the time of taking a risk if the valuation was allowable or not.

Mr. Kerr—In cases where a vessel has lost money to her owners would they not be likely to insure her up to her cost, as shown by her books, and would not the underwriters consider themselves bound by a free valuation, even if much beyond the actual worth of the vessel? The question was ruled out as objectionable. Would you consider an over-valuation fraudulent unless without proof that it was so intended? This question was considered a question for the jury to consider. Agents and owners sometimes over-insure without the knowledge of each other or under misapprehension.

Cross-examined by Mr. Thomson—Witness may have told Mr. C. E. L. Jarvis that he had \$2,000 insurance upon the freight of the vessel, as agent for the North American Ins. Co. He had no knowledge at that time of any other insurances upon the freight.

CHARLES SINCLAIR, master mariner, was sworn and examined by Mr. D. S. Kerr—He said he has followed the sea since 1852, and has been in Havana, Matanzas and Cardenas. He knew Thomas C. Yannes at Cardenas; Yannes was a shipbroker, and witness chartered a sugar or melado cargo with him; could not say that Yannes is doing a large business at present; chartered with Yannes in 1874. Leaving Cardenas with the wind E. N. E. witness would keep close to the wind until reaching Salt Cay Bank, then he would put the vessel on the starboard tack, if proceeding to New York; vessels coming out of a port in a warm climate are more apt to leak than if coming out of a port in a cool climate; if in the Brothers' Pride at night, she leaking badly and in lat. 27.30 N., he would keep the vessel on her course. If the vessel had 8 ft. of water in the hold she could not be got into any port from the position given, and she would not steer; if she had a deeper draught forward than aft she would not steer, and would not run as well as if free at the head. With the wind E. N. E. and twelve feet of water in her hold and in lat. 28.30 N. she could not, he thought, be run ashore anywhere, at least in any place he knew of, especially, if the water was gaining on her one foot per hour; if 8 ft. water in her hold and "by the head" several inches, she could not be put before the wind; she would not mind her helm. Small bilge casks are almost straight staved. He was master of a vessel that grounded in Cardenas; it had the effect to make the vessel leak more than usual and caused her butts to strain. Witness then explained the peculiarities of Cardenas harbor to the jury by the chart; his vessel was three years old when she grounded and commenced to leak before she got off; she grounded on a sandy bottom; a vessel grounding on the sand would, perhaps, have her metal strained.

Mr. Kerr—What would happen her metal if she grounded on rocks?

Mr. Thomson—You might as well ask if on a torpedo.

Witness proceeding, explained "hood and ends" and said it was a term

applied to the joining of the timbers at the stem of the vessel ; if four holes 7 ft. under water, were admitting water into the hold the sound could be heard on deck in moderate weather ; if the holes were four feet below the water mark and near the lazarette hatch, the noise of the running water, to be heard on deck would depend on the state of the weather ; if a person went down into the ship to look after the leak his attention would be attracted by the running water from the holes.

Mr. Kerr—Do you know if vessels ever discharge their ballast on the bar in Cardenas ? A. I have seen ballast discharged on the bar ; it is not the practice to discharge ballast there.

Cross-examined by Mr. Thomson—Witness said it was not possible that the Brothers' Pride struck that particular spot where the ballast was discharged.

Mr. Thomson—Would it not be peculiar for a captain and crew to leave a derelict, and play around her in their boats for four hours ? A. I never had a personal experience of the kind. I heard of a case where the captain and crew stayed by the abandoned vessel three hours ; the reason this captain and crew stayed by their derelict was because he hoped to attract the attention of passing vessels. The small boats on the ocean would only be small specks. This casualty occurred in mid-ocean. Never knew a vessel that would work better by being loaded down by the head ; he would always load a vessel so as to bring the water to the pumps ; if a vessel would work better by being loaded down 8 inches by the head, it would be better to do so.

Mr. Thomson—Have you ever heard of a vessel being loaded down by the head. A. I have never known such a case. If in a vessel with 7 or 8 ft. water, and 863 casks of water in her hold, he would take to the boats ; in such a case he would put up a signal of distress ; would raise the signal as a matter of course. If a vessel of 442 tons had 863 casks of melado on board, and 12 ft. water in her hold, would like to get out of her as soon as possible. She might not sink immediately in that condition, though the probabilities are that she would ; under such circumstances he would not have all sails set. In port the log is kept by civil time, at sea by nautical time ; the nautical day begins at 12 p. m.

Re-examined by Mr. Kerr—If a vessel went ashore, and came off not leaking, he would think she had not received any damage. In case of emergency the master of the vessel is the best judge.

GORHAM D. STEEVES was sworn and examined by Mr. D. S. Kerr—He said he and Dr. Steeves and Gilbert Steeves of Liverpool, have been as a firm engaged in shipping. They have built in the last 8 years 6 or 7 ships ; the firm built a vessel in 1873.

Mr. Kerr—What did the vessel cost per ton ? Mr. Pugsley objected to the question as irrelevant. The question was overruled and the cost of a vessel in 1879 substituted for 1873. Witness could tell of the cost of a vessel in 1878 ; that year she cost, ready for sea, \$38 per ton. This rate, he said, was minus finishing for class, tackle, sails, and coppering. Fitting her for class, &c., would cost \$3 per ton more. He has had vessels insured ; insurance companies, in his experience, always require as high a valuation as possible ; witness would require the valuation low ; would consider a good working vessel, sound, thoroughly overhauled in



1778, having had \$12,000 expended on her here in 1876, 10 years old in 1876, and 600 tons carpenter's measurement, worth \$75 per ton. The smallest price he has had a vessel built for—hull and spars—in the last seven years, was \$26 per ton. Witness was not cross-examined.

JAMES C. JOHNSON was sworn, and testified that he lives in Union Lane, St. John. He knows Howard C. Thomas, had a conversation with him on Magee's wharf, St. John, in July, 1879; asked Thomas if they had a rough time when they left the Brothers' Pride; Thomas said they had, and that when leaving her she went out of sight and that he supposed she sunk. Witness was not cross-examined.

GILBERT MURDOCH was sworn. He is the superintendent of the Water Works and has been such for 31 years; has a scientific knowledge of hydraulics; has made some experiments with a view to ascertain how much water under a 2 ft. head would flow from a  $1\frac{1}{4}$  inch auger hole; could make similar experiments so that the jury could see them. He then produced a memorandum of his experiments, and read as follows:—

Under a head of one foot and by actual experiment is discharged 160 cubic ft. per hour; under a head of 2 ft., 225 cubic ft. per hour; under 3 ft., 277, and under 4 ft., 321; 5 ft., 357; 6 ft., 393, and 7 ft., 423 cubic ft. per hour. This is through one auger hole. A cubic foot of salt water weighs 64 lbs.; the same of fresh water, 62  $\frac{4}{10}$  lbs. A gallon of salt water will weigh 10  $\frac{26}{100}$  lbs.; made no calculations how many gallons or cubic ft. of water would a vessel 134 ft. long, 13  $\frac{9}{10}$  ft. depth of hole, breath 30 ft. contain. Through an auger hole  $1\frac{1}{4}$  in. size in five hours 2,115 cubic ft. would flow with a 7 ft. head. This amount of water would weigh 67  $\frac{1}{2}$  tons. If the hole was left running 24 hours—until 11 o'clock on Wednesday—10,152 cubic ft. would have flowed through it, or 324 tons. At the same head, 7 ft., up to 4 o'clock Tuesday afternoon 391 tons would have been admitted, provided another hole was added for 5 hours. The discharge under a one ft. head through one  $1\frac{1}{4}$  in. hole for 36 hours would be 5,774 cubic ft. or 184 tons; under a 3 ft. head, 9,997 ft. or 316 tons; 4 ft. head, 11,577 ft. or 378 tons; 5 ft. head, 12,861 ft. or 410 tons; 6 ft. 14,148 ft. or 450 tons; 7 ft. 15,242 or 486 tons. This is for one hole for 36 hours. For 14 hours, with four holes open and a 7 ft. head, 23,688 cubic ft. or 756 tons would be admitted. The pressure of fresh water at 1 ft. depth is .0443 to the pound, or within 66-1,000th of half a pound. At 3 ft. the pressure would be 1.302; at 4 ft. 1.736; at 5 ft. 2.17; at 6 ft. 2.607; at 7 ft. 3.738.

Mr. Kerr—What is the pressure of water through one of these holes, and what noise would it make? Mr. Thomson objected, because Mr. Murdoch could not tell what noise there was aboard this vessel.

His Honor said he would admit the evidence though he could not see what light it would throw on the case. Witness continued:

Water projected from a 7 ft. head would, falling among water, make considerable of a sound. If it struck a cask it would not make as much noise. One hole running head of 1 ft. for 8 hours would admit 1,283 cubic ft. or 41 tons; under 2 feet, 1,800 cubic ft. or 57 tons; 3 ft. 2,212 cubic ft. or 70 tons; 4 ft. 2,572 cubic ft. or 84 tons; 5 ft. 2,858 cubic ft. or 91 tons; 6 ft. 3,144 cubic ft. or 100 tons; 7 ft. 3,387 cubic ft. or 108 tons. The 108 tons would fill 211 hhds. of 100 gallons each. For one hole, one ft. head, 12 hours, 1,924 cubic ft. or 61 tons; 2 ft. head, 2,700 cubic feet, or 86 tons; 3 ft. 3,326 cubic ft. or 105 tons; 4 ft. 3,859 cubic ft. or 126 tons; 5 ft. 4,287 cubic ft. or 136 tons; 6 ft. 4,716 cubic ft. or 150 tons; 7 ft. 5,080 cubic ft. or 162 tons. In 162 tons there would be 316 hogsheads of 100 gallons each, and 86 tons would require 168 hhds.; 105 tons, 207 hhds.; 126 tons, 240 hhds.; 136 tons, 267 hhds.; 150 tons, 293 hhds. The joint discharge of 1 hole, 36 hours, 1 hole, 12 hours, 2 holes, each 8 hours, would be as follows: Under 1 ft. head, 10,625 ft. or 328 tons; under 2 ft. 14,400 cubic ft. or 460 tons; under 3 ft. 17,740 cubic ft. or 563 tons;

4 ft. 20,582 cubic ft. or 672 tons ; 5 ft. 22,864 ft. or 779 tons ; 6 ft. 25,152 ft. or 800 tons ; 7 ft. 27,097 ft. or 864 tons. 328 tons would require 639 hhds. 100 gals. each ; 463 tons, 897 hhds. ; 563 tons, 1,105 ; 779 tons, 1,424 hhds. ; 800 tons, 1,569 hhds. ; 864 tons, 1,688 hhds. The head would diminish when the holes were covered inside and out with water. The joint discharge of 4 holes for 6 hours at one ft. head would be 123 tons ; at 2 ft. head, 172 tons ; at 3 ft. head 6,648 cubic ft. or 211 tons ; at 4 ft. head, 7,704 cubic ft. or 252 tons ; at 5 ft. 8,568 cubic ft. or 273 tons ; 6 ft. 9,532 cubic ft. or 300 tons ; at 7 ft. 10,152 ft. or 324 tons. This is allowing 2000 pounds to the ton.

Cross-examined by Mr. Pugsley, witness said he experienced with a hogshead which had a hole in its side and was continuously receiving water with sufficient force for a given head. The only actual experiment he made was under a two feet head. The friction of resistance through a rough hole is different than through a smooth hole ; had a division in the hogshead to prevent commotion of water ; the reservoir at Little River is about 50 ft. higher than where the experiment was made, but this elevation would have no effect upon the experiment he made. The flow is caused by gravitation, and depends upon the distance from the earth. In some cases head is equivalent to force. The reservoir is 163 ft. above low water mark. Oscillation would have an effect upon the flow of water through holes in a vessel, and if sailing the pressure on the holes would be different than if she was stationary. What would be the difference he could not say. It would be impossible to tell how much water would flow into a vessel at sea, the oscillation increasing and decreasing the flow through the holes.

Re-examined by Mr. Kerr. Salt water is heavier than fresh water.

DANIEL J. McLAUGHLAN, JR., was sworn. He was a part owner of the Brothers' Pride at the time of her loss, when A. L. Palmer was the managing owner. Witness never wrote Capt. Tower about the insurance on the Brothers' Pride. When witness became interested in the Oulton fleet he thought Capt. Tower was in the Emma Oulton. He never saw Capt. Tower while in the Brothers' Pride.

Cross-examined by Mr. Thomson—He had no part in the management of the Brothers' Pride.

JAMES MITCHELL sworn. He has been a resident of St. John 37 years, and has followed the sea for 34 years ; is a master mariner ; in wearing a ship he would port the helm if he had not room to wear around in stays because the vessel might go ashore ; has been in Cardenas. The bottom of the bays in Cuba are generally coral and hard mud ; wherever he has sounded it was so ; has heard melado swash in casks—the casks having a light and heavy side ; the heavy side of the cask would be the down side before it was rolled ; examining the Brothers' Pride's log book witness said there were omissions in it ; no variation of the compass work ; no leeway given, and it was generally incorrectly kept ; other defects, he said, were no entries in it from the 29th April to the 4th May. The wind in the Gulf Stream rises at about 9 a. m. and decreases after 2 or 3 p. m. ; an easterly wind blows heavily in the month of May in the Gulf Stream ; kicks up a nasty sea. The mate and second mate generally sound the pumps. From the condition and position in which the Brothers' Pride was described to be, he would have kept her on her course ; could not have got her into any



port, and would not have taken her into Brunswick without a pilot. If the Brothers' Pride was in lat. 27.30 N, at 8 p. m., she could not have been steered for any shore on Wednesday night, providing she was in the condition alleged; has always found Capt. Tower to be a straight-forward man; have known him for 5 years. Capt. Tower is not a talking, blabbing man; he is a man of very few words.

Cross-examined by Mr. Thomson—He has generally found that vessels leak a little more than usual after going out of a hot climate; she would close up in four or five days; if the captain said she did leak on the first day out witness would think she was tight when leaving port.

HENRY VAUGHAN, master mariner, was called. He is a resident of St. John and first went to sea in 1825; has sailed among the West Indies but has never been in Cuba; did not know the Brothers' Pride. The Gulf Stream is not a pleasant place to be in, in a N. E. wind. With a N. E. wind the stream runs faster. Copper on a vessel is guaranteed to last three years. If she ran on the mud her copper might be strained. One butt with the oakum out will leak sufficient to keep two pumps going. New Brunswick spruce will shrink considerably in hot weather, and if a vessel lay a month in a hot port, when proceeding to sea she would leak. The Gulf is a squally place. If the vessel at 8 p. m. was disabled by one pump being broken and one foot of water gaining on that pump, witness would look to the boats for safety; if she had 6 or 8 ft. of water in the hold it would be time to abandon her. He had an experience of a treenail hole leak in a new vessel just launched. The hole was near the keel in the stern and a stream shot through it up to the deck, a distance of 22 ft. A carpenter aboard tried to cover it with his coat but failed. Witness, with the assistance of a mallet and another man managed to get a treenail with a tapered edge into the hole. If the Brothers' Pride was bored 7 ft below the water line—the hole  $1\frac{1}{4}$  in. in size—an individual could not, he thought, put a plug in the hole with his hand. He could not do it without a mallet and a tapered edge plug. At 3 ft. and at 2 ft. the assistance of a mallet would be required to make the plug fast in the hole. If the hole was bored through the air-streak between the timbers, a plug 8 in. in length could not be put into that hole. It could not be done, he thought. Witness proceeding said he had built ships under Lloyds' inspection. He had never known timbers in the after part of a ship to be  $1\frac{1}{2}$  ft. apart. From 3 to 4 in. is the widest space he has ever seen between timbers at the air-streak, 19 ft. forward from the stern.

Cross-examined by Mr. Thomson—Witness said the space between the chocks in the air-streak is about  $1\frac{1}{2}$  ft. There is a space sometimes of 5 or 6 inches between the timbers. This extra space is caused often by waness in the timber. If he heard a person say that a ship jumped he would not think it meant pitching. If the vessel rolled the hole out of water he could then have a chance to get the plug in.

Mr. Thomson—Well, all this evidence you have given is merely guess work? A.—Yes; it is merely my opinion.

Re-examined by Mr. Kerr.—Witness was asked what he meant by guess work, and answered: What I see I believe. His opinion was mere guess work. His opinion was not an idle opinion; it was formed

from his best judgment. If Thomas says in his evidence that the water came in after he bored the hole and struck him in the stomach there would be difficulty in putting a plug in that hole.

CHARLES A. PALMER was sworn. He is a son of Judge Palmer ; he has seen the Brothers' Pride three times and owns one-eighth of her ; was first aboard of her in May, 1874. At this time her top and upper deck were bad ; examined her hold with John Doody, who is dead ; Doody, in the presence of witness, opened her timbers and tried the timbers along the bottom with a small auger ; tried timbers in the lower hold found them all good ; in the hurricane deck did not find the timbers so good ; reported his examination and there was some question about overhauling her, but as she was under charter there was nothing done to her. This was in 1874, early in the summer. Her charter parties were burnt up in the fire of 1877. In reference to her dead weight capacity witness said she carried a load of rails to North Sydney. He could tell the dead weight by the freight. The particulars of this transaction were held objectionable by Mr. Thomson, as witness had not the charter party.

His Honor thought Judge Palmer could give better evidence on the point and declined to receive the evidence. Witness, continuing, was asked if the vessel was fortunate or unfortunate. Mr. Thomson objected, and His Honor could not think that the fact of her being fortunate or the reverse was evidence. She could be an unfortunate vessel though good and sound. Witness went on and said that in 1874 she had a good deal of shear, was 13 ft. under the main hatch, long on the floors, and more than ordinarily broad on the bilges. Her spars were in good condition, but her rigging and sails were not. Her hurricane deck at that time, from a little abaft the main house to the forward part of the forward house, was not timbered up. From her passages she was a fairly good sailer, and from the amount of wear and tear on her sails and rigging she was an easy working vessel. She was not oversparred and did not labor heavily. At this time  $\frac{1}{3}$  of  $\frac{5}{8}$  belonged to D. J. McLaughlin, jr.,  $\frac{2}{3}$  of  $\frac{5}{8}$  belonged to A. L. Palmer— $\frac{1}{5}$  of this he held as mortgage in possession of Geo. Hutchinson, and the balance,  $\frac{1}{4}$ , he thought was owned by D. W. Clark. Palmer and McLaughlin were the managing owners. In Sept. and Oct., 1872, the titles of 2 or 3 wrecks and 10 or 12 vessels were transferred from Oulton Bros. to Palmer & McLaughlin. The Brothers' Pride was one of these. Mr. J. S. Boies DeVeber was the assignee of the Oulton estate. Palmer & McLaughlin got 40 shares of the Brothers' Pride from the Oulton estate. When Judge Palmer got the Brothers' Pride she was on the ocean with a cargo of coals. She next went to Cuba in 1872, and thence to New York, arriving there in the spring of 1873. She then went to St. Stephen, loaded for Buenos Ayres, thence to the West Indies, thence to New York, thence to St. John, in ballast, in May, 1874. He saw her in 1875. He never sailed in the Brothers' Pride. He saw her again in 1876—in July—when she was loaded. All he knew about her repairs was through correspondence and accounts. The accounts were destroyed in the fire of 1877. From information through accounts, witness said the Brothers' Pride was in 1876, in the months



of March and February, overhauled in the hurricane deck, and from abaft the main hatch forward, was properly timbered up, the through fastenings in the knees were all driven out and renewed. In the hurricane deck hanging knees were put and several iron knees. She was also renewed with pitch pine, and keel fore and aft repaired and refastened. A new stern post was also put in.

Mr. Palmer stood aside.

SHERIFF BOTSFORD of Westmoreland was sworn—He knew Captain Tower when a boy but since then witness only knew the accused by reputation. Witness has never heard anything against the accused.

Cross-examined by Mr. Thomson—Witness said it was 15 years since he saw accused. A man in that time might become an exceedingly bad man.

Re-examined by Mr. Kerr—Witness said, from general reputation, the accused bore a good character.

CHARLES A. PALMER resumed and said the Brothers' Pride, in addition to repairs already mentioned, was retreenailed, received new deck beams, heavy bilge logs on both bilges, new mizzenmast, three new topmasts, new lower topsails, some new rigging and other sails. The whole amount of this labor and new material he could not tell the cost, but for work done on her in 1875 and 1876 bills were paid to the amount of £3,000, of this amount in 1876 £1,120 were expended on her. She was reclassified at this time for four years. Captain Tower joined the vessel in 1877. Captain J. J. Brownwell was in her previously. Tower was in the John G. Gladstone before going in the Brothers' Pride. The Gladstone belonged to A. L. Palmer but was registered in the name of J. A. Belyea. About New Years, 1879, witness received instructions to insure the Brothers' Pride for \$3,000, valued at \$16,000, on D. J. McLaughlin, Jr., interest, if he could get it done at 5 p. c. net. No company was mentioned. He sent to agents in New York and accordingly received a policy from the Great Western of New York for that amount. He received the instructions from A. L. Palmer in presence of D. J. McLaughlin, Jr. After telegraphing to New York he received a policy from the Great Western In. Co. for \$2,000, the vessel valued at \$16,000. It was a voyage policy from Cardiff to Cienfuegos, thence to north of Hatteras. About the 20th March, 1879, witness wrote to his agents in New York, P. I. Nevius & Son, and received a reply that they had insured the freight of the Brothers' Pride, from Cardenas, for \$5,000 at 1½ p. c. premium. Before receiving this letter witness saw a letter from Captain Tower, dated Cardenas, he remembered in March, 1879; he saw the letter in A. L. Palmer's hand, one day prior to the 30th March. Where the letter went afterwards witness could not say; remembers when he heard of the loss of the vessel; it was on the 14th of May, 1879; A. L. Palmer received a telegram that day signed Tower. In consequence of having heard that the vessel had deviated witness wrote to Thomas B. Harris, Boston, about the 15th April, 1879. After writing to Harris, witness received from him a policy of insurance purported to be issued by the New England Mutual In. Co. of Boston. After the letter, which is now missing, was received from Tower, the insurance on advances was changed to cover the altered voyage from Cienfuegos to a port N. of Hatteras. There

were two insurances, one in the Anchor and the other in the Orient. The Anchor had a second stipulation for an additional port on paying an additional premium of  $\frac{1}{2}$  p. c. The stipulation in the Orient was the same. Witness paid the whole premiums in cash to Mr. Loughhead, on or about the 24th April, 1879. The premium was  $2\frac{1}{2}$  p. c. and \$2 policy fees; it amounted in all to \$77. Witness has no knowledge of any policy in the Insurance Co. of North America on the Brothers' Pride. He saw a policy in this company in the vault in A. L. Palmer's office. Sixty days after making the preliminary proofs on the advances, and after the vessel was lost, witness applied to Mr. C. E. L. Jarvis and asked for the amount of a policy for \$3,000. Mr. Jarvis asked what about the insurance on freight. Witness replied that it was insured in New York for \$5,000, and that he believed it was valued at that amount; told Mr. Jarvis there was no other insurance on the freight, and that there was a policy in the Insurance Co. of North America which did not cover the voyage; had no personal knowledge of Judge Palmer's insurances, though he knew there were insurances and the voyages covered; could not say where the insurances were effected; noticed in an account from Belyea & Co. to Judge Palmer that some of the insurances ran out on the vessel's arrival at Cienfuegos; knew no double insurances on the vessel. In consequence of deviation witness put on a \$2,000 insurance in the New England Mutual In. Co.; wrote a power of attorney to P. I. Nevius on the 23rd of May, 1879, and with it a certificate of ownership of the vessel, and the \$3,000 policy in the Great Western and the \$2,000 policy in the Great Western and the \$2,000 in the New England Mutual. The New England Mutual policy was paid about the 3rd August, 1879, the net amount being \$1,900—premiums and costs of collecting deducted. The three policies in the Great Western are not yet paid, the company refusing to pay. Witness instructed his agents in New York to bring an action against the company for the \$5,000 on freight; the \$3,000 on hull and \$2,000 on hull. For the \$5,000 freight he has never seen any policy; it was issued as an endorsement on an application or a memorandum policy; the suit has been brought in the name of all the owners; the \$2,000 is for himself, the \$3,000 for D. J. McLaughlin, Jr., and the \$5,000 for all the owners. Mr. McLaughlin's and witness' insurances were 5 per cent. premium. In an account from Belyea & Co., which witness saw, dated 31st December, 1878, there is a statement that insurance was effected for £2,100 on the barque, for a voyage from the United Kingdom to Cienfuegos, thence to N. of Hatteras. There was another statement in the account for, apparently, insurance of £400 on freight from Cardiff to Cienfuegos. The gross amount of insurance of A. L. Palmer's on the vessel was about \$13,000, the net amount \$10,000.

Mr. Thomson—Do you mean to say that the other \$3,000 was swallowed in premiums? A. I do, or in costs. Witness said he knew of no other insurance on the Cardenas freight than those he has just mentioned; valued the Brothers' Pride at between \$17,000 and \$18,000; based this valuation upon how she was paying, and how she worked from 1873; never communicated with Captain Tower about insurances on the vessel; wrote to Captain Tower a letter in care of Belyea & Co., Liverpool, in 1878; the letter was not about the ship's business. Judge



Palmer had no correspondence as far as witness knows with Tower ; sometimes Judge Palmer's letters were returned to the office for translation ; Judge Palmer keeps no letter book ; have always known Captain Tower to bear a good reputation, to be honest, sober, and attentive to his business ; had personal conversations with Captain Tower, and always found him a taciturn kind of man, and reserved about matters outside of his business ; would not believe him capable of feloniously scuttling a vessel. Had a conversation with Tracey Roberts in his (witness') office, St. John, in December, 1879 ; Roberts on this occasion said that he was going to New York to say the cargo of the Brothers' Pride was not melado ; also said that in going there he expected to get \$500 for saying the cargo was not melado. Roberts asked witness what he would give him for not going to New York to say the cargo was not melado. Witness then and there told Roberts to get to h—l out of that.

Cross-examined by Mr. Thomson—Witness said he told Roberts to get to h—l out of that.

Mr. Thomson—You considered your office the threshold to that place, then ?

Witness—Am I supposed to answer that your Honor ?

Mr. Kerr then said he had a question or two he forgot, and with the permission of the Court Mr. Kerr was allowed to re-open his direct examination. Witness said in February, 1879, Captain John Mahony wanted to get the frame of a vessel on end, and asked witness if he wanted a ship built. Witness said if he could get up a company he would build, and negotiated to this end ; finally the idea was banished in the following July ; he purchased two shares of the barque Karnak in 1878, newly launched, for \$20 per ton for hull and spars ; it cost \$17 more per ton to fit her out ; never promised Capt. Tower a vessel, but he could tell who did. This evidence was overruled ; Mr. Thomson resumed the cross-examination. Witness blocked out on paper many of the questions put to him by Mr. Kerr ; never told Mr. Jarvis that he furnished a notarial statement to the Great Western Ins. Co. ; saw D. J. McLaughlin, jr's and his own protest that he forwarded to the Great Western Ins. Co., but he did not see Judge Palmer's ; never said he saw all the letters that were written by Judge Palmer to the captains of the Judge's vessels ; sees nearly all the letters ; practically, the three protests were sent with witness' knowledge ; did not remonstrate with Judge Palmer about his protest. George Hutchinson's  $\frac{1}{8}$  share in the Brother's Pride was sold under mortgage at auction to A. L. Palmer for \$350. Witness bid it in and was made a present of the share by his father. No person bid against him when he bought the share : when the vessel was lost both insurances were paid. There was no deviation clause that he knew of in the English policies, and though the vessel had deviated from her course the English policies were paid, and protest proofs of the vessel's loss sent to the English companies ; could not see how the insurance was paid unless the policy contained the deviation clause, and unless the policy contained such a clause, he felt sure in saying the insurance company would not have paid. He never saw credited in Belyea & Co's account current a sum of insurances amounting to £500 on the hull of the Brothers' Pride, the insurance having been effected in the Home &

Colonial Ins. Co.; never heard of this company nor of Roxborough & Co. previous to this trial. Witness was asked to look at an English company's policy and see if it did not cover a voyage from Cardiff to Cienfuegos, thence to Cardenas; (policy put in witness' hand). Witness said it did to Cienfuegos, and there also appeared the word Cardenas in in the policy, but he could not say it was *and* Cardenas; never effected any insurance in England. In a similar policy in the London & Provincial Ins. Co. on hull and materials for £500, Cardiff to Cardenas, Cardenas was mentioned; Cardenas was underlined. A receipt purporting to be for the £500 was then placed in witness' hand, and he was asked if any reference was made to this amount in Belyea & Co's accounts current; he said he never saw any such sums in Belyea's accounts credited as having been paid by the London & Provincial Co. After looking at a Universal Marine Co. policy for £500 witness said it covered a voyage from Cardiff to Cienfuegos and Cardenas—the latter two words were underlined. Another policy was put in his hand. He was asked if the voyage was not set forth in this policy as from Cardiff to Cienfuegos to Cardenas. Witness said the policy did not appear to have expired at Cienfuegos. A receipt produced for the amount of policy witness could not identify. He then looked at a Merchant & Marine policy for £150, and was asked if it did not contain, underlined, the words *and Cardenas*. He said he saw the words but they were not, in his opinion, underlined. A receipt for the amount of this policy was produced. Witness said he never saw such an amount credited in any of Belyea & Co's accounts, though it may have been included in the lump sum of the account.

Mr. Thomson—Will you swear, sir, that not one or all of the sums are specifically credited in the accounts current from Belyea & Co.

Witness would not swear that some of the amounts of the English insurance company's policies are not mentioned in Belyea & Co's accounts current. Witness said the words *and Cardenas* were in a policy of £500 in Thames & Mersey company, which was produced and handed to witness. A receipt for the amount was produced and witness said it may be credited in Belyea & Co's accounts current, but not specified as Thames & Mersey insurance; he had no knowledge of ever seeing a Lloyds' policy; was not aware from his father that an insurance was effected in English Lloyds on the Brothers' Pride. Witness proceeding said he saw a statement in a draft that insurance had been effected in England; did not know that A. L. Palmer insured in England, and did not effect insurance in England on the Brothers' Pride. Witness said he did not know that A. L. Palmer had effected insurances in England, though he knew that insurances had been effected in England.

Mr. Thomson—Where the insurances in England effected by you? A.—They were not. I am aware that Mr. McLaughlin trusted my father (A. L. Palmer) and myself to transact his insurances. A. L. Palmer could not effect the insurance himself, it would have to be done by some brokers. He did not know whether it would have to be done on A. L. Palmer's order. A. L. Palmer did not effect the insurance himself.

Mr. Thomson—If your father (A. L. Palmer) wrote to his agent in England to effect this insurance, do you consider that it is not effecting



insurance himself? A.—I do. Proceeding witness said D. J. McLaughlin owned 13 shares of the vessel when she was lost. Witness has taken considerable interest in this case but has not acted as counsel or solicitor. He has obtained several witnesses for the case. The copy of the charter party is in his possession. He had what he believed was a copy of the charter party in court, and showed it to Mr. Pugsley. He said to Mr. Pugsley it was his own copy.

Mr. Thomson—Did you not tell Mr. Kerr it was a copy. A.—I did not. Witness said that he told Mr. C. E. L. Jarvis that the policy in North American Ins. Co. did not cover the voyage, but he did not tell Mr. Jarvis that \$5,000 on the freight was covered by a \$2,000 policy in the North American Ins. Co., and that the balance was covered by the \$3,000 effected in the Orient and Anchor by Mr. A. L. Palmer.

Mr. Thomson—Did you say to Mr. Jarvis that the application made by Mr. Palmer in the Orient and Anchor was first made on freight only, and afterwards altered to advances on vessel so as to protect the \$3,000 advanced by A. L. Palmer, otherwise the other owners might have claimed a share in the insurance, as he had not seen the application? A.—I did not; neither did I know what was in it.

Mr. Thomson—Did you say to Mr. Jarvis that the \$3,000 on advances, and the \$2,000 with the North American Co., made up the amount on freight, which amounted to over \$4,900, the object of putting it on advances was so that your father might be protected so far as other owners were concerned? A.—I did not. Continuing, he said, as commander of the Brothers' Pride, Capt. Tower received \$65 per month. Moses Lawrence and Mr. Lewis are Capt. Tower's bail. Witness indemnifies the bail.

Mr. Thomson—Who indemnifies you? A.—Capt. Tower; that's all I want.

Re-examined by Mr. Kerr.—Witness never saw the originals of the Brothers' Pride's charter party. He saw sums of money in Belyea & Co.'s accounts, but no particular mention was made of any insurance amount; told Mr. Jarvis that there was an insurance of \$5,000 on the freight, and that there was an insurance in the North American Co., Mr. Ranney, agent, of \$2,000, which did not cover the voyage; may have said that \$3,000 was on to protect Mr. A. L. Palmer's account. Insurances on advances would be against total loss only, and insurances on freight would be a contributing interest in general average.

Mr. Kerr—Did you in the swearing of the jury use any influence with the sheriff, deputy sheriff or any constable about getting any particular person on the jury? A.—I did not. Had nothing to do with the handing of Capt. Letteney's name to the sheriff, and did not interfere in any kind of way with the officers of the court as regards the selection of the jury.

To Mr. Thomson—Witness said that he was not told that Letteney would be at court the day the jury were empanelled. He has known Letteney since 1874; did not know that Letteney was a particular friend of Capt. Tower; never saw Capt. Letteney show Messrs. John and D. S. Kerr over a vessel, and this is the first witness heard of it; took the Messrs. Kerr over a vessel and pointed out particulars of ship construction;

went on board a vessel with Mr. D. S. Kerr, and Capt. Letteney was there ; Letteney did not show them over the vessel ; this occurred about 8 or 10 days before this trial commenced, and aboard the *Harry Bailey* ; Letteney, who was in the hold with witness and Mr. Kerr, did not accompany witness ; he may have accompanied Mr. Kerr ; was in the vessel's hold twice, and could not remember if Capt. Letteney held the light ; he had not attempted to evade, and did not intend to throw Mr. Thomson off the track ; Letteney may have held the light all the time in the hold ; did not converse about this case ; did not tell Letteney why he took Mr. Kerr on board the vessel ; they were 30 minutes in the hold of the vessel ; could not tell whether Letteney understood that Mr. Kerr was being instructed as counsel in the case ; there is not a seafaring man in the port of St. John that would not assist witness in examining a vessel. Though this occurred, witness said, he stood by and saw Letteney sworn on the jury. On the Sunday night before the trial did not know that Letteney took tea with Capt. Tower ; spoke to Letteney in court the day the jury was empanelled about a man named Colwell ; never knew that Letteney was closeted in John Kerr's office the day the trial commenced.

To Mr. D. S. Kerr—Proposed to you, Mr. Kerr, to go on board the *Harry Bailey*. I knew that you went into the vessel to inform yourself what an air-streak was. I think you spoke to Letteney while in the vessel. Mr. Kerr then called other witnesses to disprove this. He could not address the jury with anything but misery unless the cloud was cleared up. Mr. Thomson objected to the matter being gone into now. Mr. Kerr said it was a vile charge and the like had not been known since the days of the bloody Judge Jeffreys, the murder Judge.

His Honor said the inquiry was of a collateral nature and had no connection with the merits of the case, he could not hold the inquiry until after the case was over.

DEPUTY SHERIFF RANKIN was then called. He could not say how many times Mr. Cleveland visited the jail to see Thomas ; the Sunday before or after the Grand Jury found their bill against Tower Mr. Cleveland asked for admission but witness refused.

PHILIP PALMER was then called and sworn—He is a nephew of Judge Palmer ; generally makes a copy of Judge Palmer's letters ; sometimes the judge's letters are returned for translation ; copied a letter sent to Captain Tower by Judge Palmer to Cienfuegos in 1879 ; nobody could read the letter ; copied it and the judge signed it. It contained a draft ; recollected copying another letter and addressing it to Captain Tower at Cienfuegos when he was there in March, 1879. When the judge is away Charley or witness generally opens the letters. A draft was then produced and identified ; witness said he wrote Tower the time it was dated March 12th, 1878. This draft he put in a letter of Judge Palmer's and mailed both to Captain Tower, Cienfuegos. The draft was intended for the captain to sign there and return. Witness thought he had copied a letter of Judge Palmer's to Captain Tower, in Cardiff, but he had no distinct recollection of it ; remembered the contents of the letter that contained the draft to Captain Tower at Cienfuegos.

Mr. Thomson questioned witness as to his memory. He had not a



good memory, but could recollect some of the contents of the letter; no letter book is kept in Judge Palmer's office. He believed that he could recollect about everything that was in the letter mailed to Tower in Cardiff. Three letters were then put into witness' hands and identified as letters received from Captain Tower. The letter taken out of the office by Judge Palmer, when he intended to call at Mr. Jarvis' office, was not one of those produced; that letter is missing; thinks he saw all the letters received from Captain Tower from the time the vessel left Cardiff up to the time she was lost; these letters were the ones just produced, and the missing one; has known Captain Tower since he was a boy; Tower is a self-made man, who has succeeded by his own exertions, and used to live at Wood Point, Westmoreland Co. Witness has considered Captain Tower a careful, thrifty, sober going man; did not know what money Tower received in marrying. He never wrote a letter to Captain Tower saying anything about insurances on the vessel. Mr. Kerr remarked that he wanted to make it known, as strong as iron, that Captain Tower knew nothing about the insurances upon the vessel. Correspondence between Captain Tower and Judge Palmer was then submitted as evidence. Witness said he found the original of a letter dated April 5th, 1879, from Judge Palmer to Captain Tower. Mr. Thomson objected to it as being the answer to another letter not produced in evidence. At any rate the correspondence between Mr. Palmer and Tower was not evidence. Mr. Kerr argued that it was evidence of vital importance, and he would put in, if possible, all the letters written. Witness said the drafts were sent to Captain Tower to sign; one in his writing.

The Judge said it was evidence as relating to the draft of \$3,000, and also to go for what it was worth as showing that Judge Palmer did not give any instructions to Tower as to insurance.

The letter dated St. John, April 5, 1879, was then read by witness, as follows:—

My Dear Captain: I received your's from Cienfuegos, informing me of the charter of the Brothers' Pride, to carry melado to N. of Hatteras at \$5.25 per cask. This is good business. She ought to gross \$5,000 if you are careful about expenses and get away quick. Come to U. S., throw out your cargo and run right here in ballast. I think I can get a deal freight to the West Coast of Ireland, and the voyage can be made quick in the spring of the year, and money ought to be got out of the ship this season to pay for rebuilding her in Liverpool. It cost enough, but I believe it will turn out all for the best. She is fit for any work.

I sent you a bill to Cienfuegos to sign. I have not yet received it. I enclose duplicate, sign that and send it here, and if I get the other I will destroy one. I cannot tell what day I may be compelled to use it. Send me what money you can get out of the outward freight. There can be no doubt but that I can be paid out of the freight.

I paid your daughter for your wife fifty dollars, and I think your wife is well. Hoping that you may get away quick and have a prosperous voyage. Messrs. P. I. Nevius & Son will collect the freight on arrival and will pay your bills. I am, &c., A. L. Palmer.

Captain W. H. Tower, barque Brothers' Pride, care British Consul, Cardenas, Cuba.

The reply was put in evidence, dated Cardenas, April 17, 1879.

A. L. PALMER, ESQ. Dear Sir—Yours of the 5th came to hand yesterday; contents noted. The first mail that goes north since the arrival of your letter is to-morrow, so I write to-day and sign the duplicate and enclose it with this. I have got the best freight, viz., 37½ cents, that has been paid in the Island this year;

but it took some time to get around here. I had a head wind all the way, which is very unusual. I don't suppose I shall have very much money to send you for one-third of the freight you know was drawn in Cardiff, and 10 shillings per ton don't amount to a very large sum. However, what there is you will get. We are loading melado for Baltimore, Philadelphia or New York. I think the freight home from here will amount to about \$4,400. I hope we shall be ready to leave in a week more.

Hoping everything will be satisfactory, yours very truly, WM. H. TOWER.

Witness, continuing, said the substance of the letter that accompanied the draft, which was for \$3000, was that the Judge wanted \$3000 to settle a suit brought against him by T. W. Peters. This letter was dated the 12th of March, 1879. The letter missing is this one; never wrote or copied a letter telling Capt. Tower or any other captain to cast the vessel away; always wrote quite the reverse.

Cross-examined by Mr. Thomson—He copied most of the Judge's letters; did not recollect copying letters to Belyea & Co. in Dec., 1878, or first of 1879, ordering insurance; may have done so; had reason for believing his recollection about the letter, because it had reference to the suit brought by Peters; copies many letters without thinking what is in them; copies Judge Palmer's letters and mails the copy. Judge Palmer's drafts of letters are always kept; recollects that Judge Palmer received accounts from Belyea & Co., but could not say they were half-yearly accounts; the missing letter was written between January and April and contained the draft returned by Tower.

CHAS. E. CAMPBELL was sworn and examined by D. S. Kerr. He resides in New York and previously resided at Wood Point, Sackville; has known Capt. Tower for a number of years; Tower is a prudent man, careful and saving; has known accused as a man of few words.

Cross-examined by Mr. Thomson—Known Capt. Tower for the last 15 years. Witness left Sackville when Tower was 5 years old. Tower was a good boy, and, said Mr. Thomson, you probably give credence to the adage, "the boy is father to the man."

JUDGE PALMER was then sworn and examined by D. S. Kerr. He said he made a search for the missing letter but could not find it; recollected shortly after receiving the letter of carrying it into Mr. Jarvis' office for the purpose of getting the policy altered; thought he had the letter in his possession afterwards—in his over-coat pocket; the letter might be in the possession of Mr. Loughhead, insurance agent. Witness said that towards the end of the year 1877, on account of the failure of Oulton Bros. and J. C. Brown, he lost everything he had in the world, upwards of \$150,000. Witness and Mr. McLaughlin, another heavy loser by the failure, got control of the Oulton estate. Some of the vessels turned out good, and some bad. Geo. Hutchinson held  $\frac{1}{4}$  of the Brothers' Pride and  $\frac{1}{4}$  of the Royal Sovereign. The latter was run ashore and sold as a wreck before coming into witness' possession. The Brothers' Pride they got in 1872 or 1873. He took a mortgage on Hutchinson's share, and purchased D. W. Clark's share. After he got possession of her in 1874 Mr. Clark offered to sell his shares in the Brothers' Pride and the Royal Sovereign if witness would guarantee him against a lawsuit that was pending against the Sovereign, she having been previously wrecked. He gave Clark \$2,000 for his interest in the vessels.



Witness then believed the Brothers' Pride to be worth \$12,000. He was never on board of her; there were plenty of times when she could not have been sold for \$12,000. When in Liverpool in 1875 she underwent very extensive repairs, so he was informed by his agents in Liverpool, the master, and the bills rendered. Returning to Liverpool in 1876 she took ground in the Mersey and had to be docked, and again opened and repaired, and afterwards represented to witness as a better vessel than when new. For both these repairs the bills amounted to over \$12,000. In the fire of 1877 witness never saved a scrap of paper. A vessel that has been tried and works easy, no matter how old, is more valuable than a new vessel. If she works hard it takes all the profits off each voyage to repair her. A vessel, in his opinion, is entirely a question of money. The Brothers' Pride was a remarkably good vessel in every way, always carried her cargoes well and worked well. Her value in 1876, he considered, about \$35 per ton; would not then have taken \$45 per ton for her; knew Capt. Tower by reputation, and employed him because he thought him a good man; never, to his recollection, wrote Capt. Tower at Cardiff about insurance; never made any suggestions to Capt. Tower by letter or any other way to cast away the vessel; personally, continued Judge Palmer, I contracted no insurance on the vessel that would cover the voyage from Cardenas to New York, except what I made with Mr. Jarvis. I am not speaking now of what I procured agents to do. In the year of 1872 I assumed or was liable for \$20,000 to T. W. Peters, who sued for this amount. I arranged to have proceedings stayed by paying \$3,000. The Brothers' Pride owed on advances \$3000 and I had no other way of raising this \$3000 than in anticipating her freights; drew a draft and forwarded it to Capt. Tower for \$3,000. At Liverpool the bills were all paid off and she was all clear, except this \$3,000; this amount I subsequently insured as advances. [He identified a policy in the Orient for \$1,500 on advances, and one in the Anchor for a similar insurance on these advances. The correspondence between Tower and witness was then identified; he received a telegram of the loss of the vessel.] My business in England is in the hands of Belyea & Co.; never wrote a letter to Capt. Tower in my own handwriting, because Tower could not read it; left the insurance on the vessel from Cardiff to Cienfuegos to be effected by Belyea & Co.; the insurance with Jarvis was all that I knew of on the vessel on this side of the Atlantic the time the vessel was lost. My son Charles put \$4,000 on the vessel, but of this insurance I did not know until after the vessel was lost; knew my son Charles had effected insurance on the freight from Cuba; such a thing as sinking or scuttling the vessel I never thought of, it was never written about and never spoken; never had any personal acquaintance with the accused, and never since nor before the loss of the vessel have I spoken with the accused a dozen times; Tower never received a solitary dollar from witness except his wages; Tower's bills were very prudent indeed, and witness considered him a good mariner. I was managing owner of the vessel until recently, when my son took charge, though correspondence with all captains was carried on in my name; had no interest in the cargo nor had Capt. Tower as my servant.

Mr. Kerr—If \$1,900 was insured on the vessel how much over and

above the premiums paid and costs of collecting, would the owners receive in case the vessel was lost? A. The premiums are very different—all the way from 12%; a barque if small, was as expensive to manage as a larger barque. His experience with spruce timber is that if it does not decay in 5 years, it will last for 50 years; the Brothers' Pride was a spruce ship. New waterways and new fastenings, etc., will make a vessel several years old as good as new; some vessels would not stand repairs; an old vessel and what people call "lucky" can never be bought for any money; he did not call them "lucky," it was the captain who makes the money; the Brothers' Pride ought to carry 700 tons dead weight; there would be no difficulty in her carrying 622 tons; thought melado never turns out what it is invoiced for and turns out 5 to 10 per cent. less; did or had intended to instruct Belyea & Co. to insure the vessel two-thirds of her value. The advantage of taking out coals to Cuba is getting clear of the tonnage dues; vessels carrying in coals do not pay tonnage dues in Cuba; this is the way I understand it; the profit of the voyage was the cargo from Cuba to N. of Hatteras; it would cost but little more to insure to the United States. A coal cargo is a risky one. It would make little difference to English insurers if they insured to Cuba or to an American port. The first account I received from Belyea & Co. was in January, 1879; had no correspondence with any other firm than Belyea & Co. in Europe in reference to the Brothers' Pride. A letter from Belyea & Co., dated the 31st December apprised me of a certain amount of insurance either at 8 %, or 8 guineas %: this letter I have not found among my papers; the account from Belyea & Co. is dated the very day I wrote to Belyea & Co; these documents crossed each other; received a letter from Belyea & Co. apprising insurance on the Brothers' Pride for £2,100, the vessel valued at £4,500; Witness offered a copy of a letter to Belyea & Co. It and another letter were read as follows:

ST. JOHN, N. B., Jan. 31, 1879.

*Messrs. Belyea & Co.:*

Gentlemen—I am in receipt of yours of the — inst., with account up to Dec. 31st. I will have the account looked over as soon as I can get it completed; and I am sorry that you have totally defeated my object in getting the account, by not sending me what I wrote for. What I wanted particularly was the credits of the insurance on the Magdala and the freights of the vessel. Your mode of charging me with the bills drawn to pay disbursements on this side, and giving no credit for the freights for months after the matters were over, effectually keeps me from keeping any check on the masters of those vessels; and if the accounts cannot be sent over showing how the matters stand immediately after the vessel leaves Europe, I will have to alter the mode altogether, and compel my masters to give security, that they will themselves send me the accounts and remittances *direct*. I cannot see for the life of me, why this could not be done as soon as the freight is collected or remitted you. You say that there is insurance on freight to collect; if so that should be noted on the account and carried into account when collected. You will see yourself how the matter works, and you will see yourself how I am made to suffer. Take, for instance, the bill drawn for the Mabel freight. You charge me with £200 paid, and credit me with £200 received. This would make it all square if it was not that you charge me with 1-4th % bank commission and some other petty charges. Take again the remittance from the Brothers' Pride. You charge the vessel 1-4th % Bank commission and it is taken out of her freight, and the balance is credited to me. And then, when I get my account for bills drawn against the money, there is another 1-4th %. Now, I am not going to say



anything more on the subject, only to ask you if there is no way to let the freight go through your hands without the expense to me ; if there is not please to let me know. You will please to send me out on receipt of this the account of the several matters referred to in the annexed memorandum so far as it has gone, leaving out matters that are unsettled, stating on the account what they are, and that they are unsettled. The Brothers' Pride you need not insure any more, as I expect her to arrive out in a few days, and the risk is too much over to pay a high premium. There can be little risk after she is clear of the land on your side. What voyage does the insurance you have cover? (Signed.) A. L. PALMER.

29 RED CROSS STREET, LIVERPOOL, Jan. 31, 1879.

*A. L. Palmer, Esq., St. John, N. B. :*

Dear Sir :—We had this pleasure on the 9th inst., since which we are without any of your favors. On Brothers' Pride there is £100 more insured, making £2,750 in all. We inclose your account with this, showing a debit balance of £2,176 6s. 3d., which we trust you will find correct. We have not yet transferred the Magdala account to your credit, as the estates of some of the underwriters have not yet been wound up, but we fear we have received almost all we shall ever get. There is £1,500 to the credit of this account exclusive of interest. Roughly speaking, taking your own and all the vessels accounts to the 31st December, exclusive of interest, there is a debit balance of £1,250.

Brothers' Pride and M. A. Palmer—We have not got the loss of their deckloads and average settled up yet, but we hope to next week, when we shall send you account. We are, dear sir, yours truly, BELYEA & Co.

Mabel—We received a further £200 from this vessel yesterday. We believe she leaves Rochefort this week. We find it very difficult to effect insurance.

An account current from Belyea & Co. was then produced dated 31st Jan'y, 1879. Witness continuing said: insurance companies are generally unwilling to take the valuation offered and always increased it. Witness finds, as a rule, that lower valuation can be obtained here than in England, where they consider vessel tonnage more valuable than they do here.

Mr. Kerr—Whatever valuation they put on the premium has to be paid? A. Yes, whatever portion of the valuation insured; whatever is not insured falls upon the owner. The insurance in the account dated 31st January is the only insurance I ever heard or knew of in Great Britain on the vessel or freight. The letter forbidding any more insurance was never countermanded. The moment I heard the vessel was going round to Cardenas and to the United States, I believed that the English insurance did not cover her, and I believe so still. The freight was insured when the vessel left Cienfuegos, but if she had been lost on this voyage the freight would not have been in the vessel and the insurance would not have attached. It was about the 22nd January that I took Tower's letter to renew the policy with Jarvis. Another account current was offered dated Liverpool, Dec. 10, 1879. The document had a part torn off and Mr. Thomson asked witness why it was so mutilated. Witness asked Mr. Thomson if the whole of the account was not there. Mr. Thomson said it appeared to be, but he would like to know who mutilated the account. Witness said he had never noticed that it was torn before; did not do it, and knows of nobody who did. The whole of the account was there, however, he said, and at his request it was shown to the jury for inspection. The accounts, Judge Palmer said, show in the credit all the insurance I have received in England on the Brothers' Pride. It is only the money a man gets in the end that indemnifies him. Witness said he would not, unless compelled, produce

his accounts with Belyea & Co. in 1878. There was nothing in these accounts connected with this case. I am not going into all my private affairs unless compelled by the court.

Mr. Thomson—I don't want to compel you, Judge Palmer, and won't. You can withdraw all the accounts you have produced if you like. The clerk then read an account from Belyea & Co., dated 8th May, 1879. Witness said the English underwriters after the Brothers' Pride was repaired in 1875 and 1876 valued her at £4,500 sterling. Her valuation here was \$16,000.

Mr. Kerr—Did the English and American underwriters both require a liberal valuation? A. I don't know. The valuation, \$16,000, is rather low I think. The underwriters require a good deal more of a valuation than a man would get if he sold his vessel. Freights in Cuba when the vessel was lost were very good and the Brothers' Pride was then in good condition; if she had carried that freight and gone back to Cardenas for another freight she would have earned fully \$7,000; never wrote to Belyea & Co. for the accounts; wrote to Belyea & Co. to send out certain letters, the drafts of which I lost; sent only for letters that I had not the drafts of; sent three months ago for these letters, and am sure I sent before Tower was arrested on this charge; sent for the letters to use in evidence in a suit against the Great Western In. Co.; never expected that I would be a witness until Thomas had given evidence about the letter from old Palmer.

The following letter was then read and admitted as evidence:—

ST. JOHN, N. B., April 5, 1879.

*Messrs. Belyea & Co.:*

Gentlemen—The Brothers' Pride was at Liverpool when last heard from, and chartered to load sugar or melado from Cardenas to a port north of Hatteras. She has a very good freight—\$5.50 gold on sugar and \$5.25 on melado, so she will make at least £1,000 stg. I want you to take care that the policies of insurance that you have on the vessel are all right; that they cover the voyage, allow a shift from Cienfuegos to Cardenas, and then to a port in North America, N. of Hatteras. You need not put any more insurance on the vessel as I consider there is not much risk, but as you paid high for what you have effected it might as well be made all right, and if the vessel loads melado it will be a heavy load. Yours, &c.,

A. L. PALMER.

Previous to leaving Cienfuegos it would be impossible for me to have communicated anything about insurance to Captain Tower, as I did not get the information of change of port being covered in England till April 24th. The whole insurance on the vessel, if collected would be compensation for her loss. There was \$4,000 more than I thought. When she left Cardenas I did not think that she was covered by insurance in England and I was not sure of it when she was lost. My letter had gone on April 5th, and before I got an answer the vessel was lost, so it would have been utterly impossible for me to have told it to Captain Tower; I mean what the owners would get after deducting everything they would have to pay out. All policies have a clause to the effect that any insurance over and above her value is not collectable. It is extremely difficult when a vessel is dodging about to keep her covered, as the slightest deviation vitiated the whole thing. What insurance I have obtained would just about cover my loss, that is the insurance minus the cost of



collecting and premiums or expenses of the preliminary proofs, etc. The freight from Cardenas was insured for \$5,000. I learned, after effecting the insurance, the freight was only valued at \$4,530. If the vessel had come forward in the ordinary manner and delivered cargo uninsured, the owners would have had more net money out of the freight than they would had she been lost on the voyage and her freight insured. The expenses of the vessel delivering her cargo would have been less than the expenses occasioned by her loss—the carrying of her crew to New York, the cost of collecting her insurances, and other costs consequent upon the wreck.

Mr. Kerr—Supposing there was \$19,000 insurance upon the vessel when she was lost, how much would the owners receive over and above the deduction of premiums and costs of collecting, &c.?

Mr. Thomson submitted Judge Palmer had no right to make deductions from the accounts. The jury and the court could tell that as well as Judge Palmer. Witness said premiums vary all the way from 2 to 12 %. The amount can be ascertained by looking at the accounts. The premiums amounted to £197 4s. 3d. The interest on the sum, from the time the vessel was lost till the money was paid, amounted to over £200 or about \$1,000. The cost of collecting amounted to £48; in short, the costs, etc., would reduce the amount to about \$17,000. Supposing there were £2,100 on the vessel in England and \$3,000 here, the owner would receive, minus the costs of collecting and premiums, about \$13,000. The expense of the wreck of a vessel depends upon the place where she was lost. If she was lost in China the cost to bring crew home, etc., would be severe, but where the *Brothers' Pride* was lost the expenses were comparatively light and did not amount to over \$900. If she had arrived safely in New York \$400 would have been saved. If the vessel could have returned to Cardenas and brought another cargo to New York her owners would have been much better off than the insurances made them. There was no object in casting her away. No; no profit in it, though there was \$4,000 more insurance than I thought there was. I had no other information than was in these papers. The jury can see the situation therefrom. Owners retain sometimes the same value on their ships though the ships grow old. It is the practice in St. John and a very common practice. It is something like a man who grows old and forgets about it. It is common for owners to have different valuations on the same vessel. If insurances are in different companies, no two companies would make the valuation alike unless in combination.

Mr. Kerr—Supposing the *Brothers' Pride* was 600 tons carpenter's measurement, 13 years old, and had \$12,000 expended on her, would £4,500 be a fair valuation upon her? Mr. Thomson objected.

His Honor thought the question hardly proper and Mr. Kerr added, would it be out of the practice of underwriters or brokers? The court asked if there was any recognized practice of brokers, etc.

Mr. Kerr—Possibly not, but would this be an out of the way practice? Mr. Thomson argued that the witness was not competent to answer this question.

Mr. Kerr—Was it a usual or unusual rate, Judge Palmer?

Mr. Thomson—There is no rate in your question. It was only a question of valuation.

Mr. Kerr—Then are parties accustomed to value a vessel of this kind, higher, lower or how, Judge Palmer.

Mr. Thomson—Surely, Mr. Kerr, this is getting worse and worse. The question was disallowed.

Mr. Kerr—Supposing a part owner makes advances on a vessel, is it usual for the owner to insure these advances separate from other insurance? Mr. Thomson—I object to that.

Mr. Kerr—In a strong voice—is it done?

His Honor said he would admit the evidence. Witness said yes, it was always done. Some companies are restricted as to age of vessels insured. Witness then proceeded to state an individual instance.

Mr. Thomson—If it is admitted the vessel was over insured, then the evidence is relevant, otherwise it is not. The evidence was decided irrelevant.

(A paper handed to witness.) This is a statement of August 28. All I remember, some persons told me that Mr. Jarvis wanted me to make a statement of what insurance was on the freight at the time she was lost. I did so. I was shown a letter from Jarvis asking for it. The real truth is, I know very well two letters from Jarvis, and other papers in Philip Palmer's possession have been mislaid, and I am anxious to get them. Every word in this statement is true, and I desire to repeat them now. The proofs of the loss of the vessel that he made to the Anchor and Orient Marine Insurance Companies, were true. I am on my oath, and the statements I made in those preliminary proofs are true, to the best of my knowledge and belief. Witness never claimed the money under the North American policy; returned to the agent, Mr. Ranney, the policy, and Mr. Ranney, in turn, returned the receipt he had received for the policy. A New England and Mutual policy was then shown to witness, who expressed a desire to see all the papers relating to insurances admitted in evidence. He said he had never seen the policy before this time.

Cross-examined by Mr. Thomson—He asked witness if he would produce all the correspondence between himself and Belyea & Co., for 1878 and 1879. Witness declined but would produce all relating to the Brothers' Pride. This correspondence, from June, 1878, to 1879 he was willing to produce, providing it relates to the Brothers' Pride. Witness, going on, said: I have produced accounts of Dec. 10, '79, and January 1st, '79, and I have an account closing with December 31st, '78, and could produce it if I chose, but it has nothing to do with this case. While willing to give you all bearing on this matter, I will not expose my private business.

Mr. Thomson—You may think so, Judge Palmer, but I have reason to think it has reference. Witness—Well, I have now the account in my pocket. You have imputed to me that I state what is false. I think that the insurance companies of New York are doing what is wrong with me. I cannot tell what a paper irrelevant has to do with the case.

Mr. Thomson—Understand me. I will not take it as a bargain not to ask for more. The first one you produce is January 31st and the next April 10th, 1879. Have you no account sent out by Belyea &



Co. after May 10 and before this one of Dec. ? A.—I am satisfied that I have not had accounts between those dates ; there may be a partial statement, but if there is it is fully repeated in the accounts put in. If there is such a one I will produce it. All items of the Pride are included in the two accounts in. If the English insurances were paid in May, '79 I ought not to have received word before Dec. I get half-yearly accounts ; that is, twice yearly.

Mr. Thomson—I want the account down to the 30th June, then ? A. I have not received an account exactly up to the 30th June. The account covering the 30th June is an account of another date ; you misrepresent me, Mr. Thomson.

Mr. Thomson—I don't misrepresent you ; I want the half-yearly account. Witness—There is no such account. All you need to convince you of that is to look at the two accounts. When I used the words half yearly I mean two a year. These are not the only accounts I have received ; one thing is the account with us ; the other is account with every vessel. I say you have got my whole account current for that year, and all accounts of the Brothers' Pride. If insurance was paid to Belyea in July, 1879, I ought not to have an account of that payment before December, but I ought to get in that account the date it was paid and interest up to December 31st. The intimation in the account dated January, 1879, was the first I had of the insurances being collected in England ; the insurances amounted in England to £2,400 ; £48 was paid for collecting this amount ; the balance is the only money I received for the loss of the vessel. All I received credit for was £2,350. This is all I received in any way or shape ; I would forfeit life itself if I received any more. I don't believe policies to the amount of £2,900 were executed. There is the £100 not collected. Belyea & Co's accounts establish an insurance of £2,750, but all I received was £2,350 the balance defraying premiums, etc. The policies were then produced and handed to witness, who said, I am under the impression that I instructed Belyea & Co. to insure 2-3rds of the vessel's valuation—£4,500. I am not sure that I named a definite sum.

Mr. Thomson—Was not a policy taken out in the Thames & Mersey for £500 in January, (policy put in witness' hand) covering a voyage to Cienfuegos and afterwards a clause in it made to cover a voyage to Cardenas ? A.—I am doubtful that this policy was effected by Belyea & Co. If they were genuine policies upon the Brothers' Pride for £2,900, certainly I would have received the money. Mr. Thomson.—But I am going to put policies to this effect in your hands. Suppose I show you policies to amount of £2,900 ? A.—You say they are genuine policies, but I do not. They may be. No one else but Mr. M'Laughlin, myself and my son Charles had an interest in the vessel. I do not know that it is a valid policy.

Mr. Thomson—Well, it looks so. The next one is in the Merchants' Marine for £150 and interlined with change to Cardenas, and full amount paid July 2nd. I ask you to look at it. A. I know nothing about it. I am not satisfied it is one of the Policies issued under my instructions. Mr. Thomson then handed witness a policy in the Universal Marine of London, for £500 stg., interlined as those before. Witness

answered as before, and Mr. Thomson asked the Judge if in his experience, as a lawyer, he could not tell that it is a genuine policy. Witness—I have no opinion. The Policy in my opinion is wrong.

Mr. Thomson—Have you a shadow of a doubt it is a genuine policy? Do you say it is forged? A.—I don't think it was ever executed and I don't think and I assume it is valid. A policy in the London Provincial was placed in witness' hands. It was for £500, covering a voyage from Cardiff to Cienfuegos, then to Cardenas—"Cardenas" being interlined. A receipt for the money was also shown. Witness said he did not recognize the policy, and did not know anything about the receipt. Two policies of Universal Marine and Home and Colonial, £100 and £500 on hull and materials, dated Jan., '79, as the others, were produced, with receipts attached. Witness.—I can't say it was or was not taken out in consequence of my instructions to Belyea. You have the same information I have. A policy issued on the 18th Dec., in Lloyds, England, was put in witness' hands. He could not recognize it and has never seen a Lloyds' policy.

Mr. Thomson—Then Belyea & Co. must have collected the money and put it their own pockets? You may say that but I do not. Proceeding he said receipts might be produced, too, and yet no money have been paid. If anybody wanted to trump up a case and bring a lot of evidence, etc., they could make all the receipts, etc., necessary.

Witness—Have you never made out a receipt for money that you never received? Mr. Thomson—I have not. Witness—Well I have. If Belyea put on this insurance and did not inform me, it would be a fraud; but I know him too well to think this. I don't account for the policies; that is for you to do. I don't deny or affirm it is a Lloyds' policy. Mr. Thomson interrupted and said, "then if a forged policy, Belyea & Co. would have to be parties to it?" Judge Palmer replied: no, my idea is that there could be no forgery without intent to fraud.

Mr. Thomson—I want you to state on your oath that there has been a forgery or a fraud; you have thrown out an insinuation to that effect. A.—I have not thrown out any insinuation to that effect, and hope you will not consider it so. I know nothing about these policies. I believe that Belyea & Co. took out policies for me to the extent of £2,400 and I believe no more; I believe some of the policies are genuine, but I could not say which of them covered the insurance on the vessel. I have doubts that all these policies were executed on the Brothers' Pride. I don't believe that every policy obtained by Belyea & Co. has been shown to me just now. Without proof I decline to have a belief.

Mr. Thomson—Well, your mind never affirms a belief unless under legal evidence? A.—I do not say that; I must have some proof. Witness continuing, said he had the strongest evidence in his mind that all the policies offered by Mr. Thomson were not executed by Belyea & Co. It is proof that all the policies were not effected in his (witness') interests. The policies do not agree with one single sum in the accounts from Belyea & Co. There was never any insurance on the freight of the vessel from Cuba in any English company. A policy of £300 in Lloyds' on freight from Cuba, valued at £4,000 was then handed to witness.

Mr. Thomson—Look at April 24, about the time you are charged



with additional premium. Is that leave to go to Cardenas not endorsed on this policy? Is it not a marvellous coincidence that this amount corresponds with the amount mentioned in your letter? A.—I don't think you have a right to impute that. I know nothing about the matter whatever. It is quite likely most of the policies are genuine, but I have no material to found a belief upon. I have my doubts that these are the policies that cover my insurance, but I form no opinion.

Mr. Thomson—Do you swear there are other policies outstanding? I have no belief.—Where does your belief end and doubts begin?—That is a metaphysical question I can't answer.—Do you believe there are any policies issued by Belyea & Co. not here?—I express no belief.—Has not all the insurances collected by Belyea & Co. been on these policies, and yet you have no belief?—I must have some evidence to form a belief on.—You have evidence you wrote for insurance; they wrote back that it was due; you got the money, and I put in your hands policies, and yet you say you have no evidence?—You leave out that they exceed what he wrote he would insure for, exceeding what I instructed him to do, and I have the strongest evidence in my mind it could not be done. I will not say they are all wrong. They do not agree in the aggregate, nor do they agree in any single sum. In letter of April 5th I stated the freight would be worth \$5,000.—I infer from this that there was a charter party from Cienfuegos?—That was written immediately after Tower's letter informing me that he had effected these freights. I only knew the bargain from Tower's letter, with option of sugar or melado. I had no insurance in England on freight at that time.—Did you write out for insurance?—Never, sir; never.—I want you to look at this Lloyds' policy, dated April 25, for \$1,500 on freight valued at £1,000 sterling?—I don't know anything about this policy at all.—Do you see when this purports to be paid?—Settled total loss, it says. If a genuine policy this shows a settlement.—Considering no instructions were given Belyea & Co., is it not marvellous that it just agrees with the value of the freight?

Objected to by Mr. Kerr and withdrawn.

Witness proceeding: I gave up the management chiefly to Mr. C. A. Palmer. I went to Jarvis to protect my own advances. Disbursements are usually paid out of the freight. This was actually advances to the vessel irrespective of the freight. It was simply intended to insure as advances.—What did you actually insure?—My advances.—What earthly use is this except on a vessel?—What I intended *bona fide* to insure was the advances. The freight was a separate matter.—Then why did you want the captain's order on freight to show Jarvis?—I wanted that to pay Peters. The ordinary evidence of an advance on a vessel is the captain's certificate or draft for the amount. The captain is the agent of all the owners. The account began at Shediad in Dec. '77, paid at Bathurst and other places. The captain had the list of advances in the vessel's book, or should have had it. My letter about it is the missing one. The draft could only be paid out of the freight. I could have got it without the captain's order; but it was to anticipate the freight, supposing Peters would wait for me, and I had no other way to pay him \$3,000. We disputed about the interest and the vessel was

lost before we could settle it.—In May 5th, 1 month and 2 days before the vessel was lost you wrote this duplicate draft and say to the captain, “P. I. Nevius will collect the freight and pay bills?”—I instructed him where to go in New York.—Yet this duplicate is dated Cienfuegos; is not that curious?—No, I filled the draft up and sent it out to him, but fearing it might miss him sent a duplicate to Cardenas. I got a letter from the captain with a copy of the charter party; never saw a paper that purported to be a copy of it. Charles A. Palmer never showed me one. I saw the bill of lading and sent it back to Nevius. Could not possibly have a bill of lading with the cargo outstanding. After the vessel is delivered the ship’s husband ought to have it. Never got a cent of this £300 on freight. Belyea & Co. are not the parties to do a thing of this kind.—About the insurance on coal?—On this freight I had to cover advances, \$2,000 with Jarvis and \$2,500 on actual freight in England with Belyea. Think I instructed my son to insure. Had £250 in England. Instructed him about Jan. 1st. When I went to Jarvis it was to renew it; it had run out at Cienfuegos. I can’t tell what the \$2000 was on; my instruction was on the advances. [Policy shown.] It is on the freight, so I had \$2,000 here and \$2,500 in England. Mr. Thomson—Tower’s letter of April, ’79 says: “I don’t suppose I shall have much freight to pay you.” \$1,392.50 would be the outside freight; so you had on that freight over \$3,250 insurance? A. Yes, if you put it on the freight, but this one here is on advances.—It expressly says freight?—Yes, it says so on the paper, but that does not make it so.—Is not the body of this application to Jarvis in your own hand-write?—Yes, it is.—How did you actually make it against the vessel when you came to renew?—I thought the other was the more proper mode.—When you changed your mind did you know Charles had \$2,000 on the freight? No, he did not tell me till after that.—Then you took no special interest?—I instructed him to do it and assumed it would be done, and he wrote me it was done as ordered.—You have the letter.—Will you undertake to say that early in December you were not satisfied that the vessel was thoroughly insured?—No, I was not. My opinion is that the vessel arrived in Cardiff sometime in the first week in December.—Have you a shadow of a doubt you were insured to a reasonable extent early in December?—I do not know.—Have you that letter or the draft of it?—My opinion is I have not. It must have been written before June, 1879, and I only keep drafts one year.—Why did you omit to ask Belyea for it?—Because I did not want it.—Was it copied by Philip or your son?—By Philip.—Then the draft would be kept?—Not over a year.—When do you burn them?—Ordinarily at the end of the year.—None of the drafts of ’79 were burned. I do not mean at the end of the year. Would keep the letters of 1878 to the spring of ’79.—If you kept the letters of 1879 that long would you not have them?—No, the spring has come. Since this year began a lot of papers kept were burned. Do not say I have burned them since this trial began. Looked for a cablegram of January 2, 1879, but have not found it yet. I endeavored to get a transcript at the telegraph office, but there I was informed they destroyed everything every six months. A letter to Belyea & Co., in 1879, directing about insurances I have not yet found.



If it were possible to find these papers I would produce them. My son Charles insured \$2,000 upon his own interest in the vessel, and another \$2000 in place of a £400 English policy that my son said he thought had run out. I knew the freight was insured before the vessel was lost. All this business was transacted with a great deal of other business; never saw any of the policies in the Great Western. If my son Charles had these policies, I never knew it, and never saw them. Capt. Tower did not make any preliminary proofs. Capt. Tower made a protest in New York in consequence of a rumor that the vessel was unseaworthy. I could not say on whose account the protest was made; perhaps it was the Great Western's. Mr. Godderich is my attorney in New York. I may have written the draft of this preliminary proof of the vessel's seaworthiness. I recollect that the subject of the protest was the vessel's condition when she left Cardiff. In fact, I did not know what repairs she had undergone at Cardiff. Capt. Tower told me that she had been recaulked, and because she had to make a severe winter passage. Tower said he had the vessel thoroughly attended to. These repairs cost witness £40. The voyage she made from Cardiff to Cienfuegos in mid-winter was, witness thought, as severe a test as a vessel could be subjected to. If the protest said that the vessel carried her cargo of coal from Cienfuegos that statement would be in accordance with my views. She leaked on the passage but generally behaved well. I could not say the leak was only through her top sides. I could not locate the leak.

Mr. Thomson—If a vessel is found to leak during rough and stormy weather upon a voyage, and such leaking ceases the moment the weather becomes mild and the water smooth, would you not attribute such leaking to her top sides and not to a leak in the bottom? A.—According to my notion there is a long distance from a vessel's bottom to her top sides. Where a leak is occasioned by a strain the strain is necessarily nearer the deck for it is there the leverage occurs. In consequence of this what is technically called the top sides or wales is made stronger than what witness considered the sides of the vessel. No mortal man can tell where a leak will locate itself. If the vessel strains she frequently "chaws" the oakum as the sailors call it. A strain would be more toward the top. It would be a bold man who would say where the leak would be.

Mr. Thomson—I did not ask where? Witness—I have endeavored to give as full an answer as possible.

Mr. Thomson—It is a long answer, but not a full answer. Witness: These words might have been in the protest I made as to seaworthiness. I know she was a strong vessel, and she was in good condition when she left Cardenas. I never said that Peters pressed me, because Mr. Peters treated me very kindly about the matter. I was sued in common process. In order to get Mr. Nevius or anybody else to accept a draft, it would be necessary to give the party some inducement.

Mr. Thomson—What prevented you from drawing on Nevius instead of on the captain or against the freight?—The only difficulty was in getting the captain to accept, and he would not accept any draft without some inducement, say by consigning the vessel to him, by putting in his hands the captain's draft which could be forced against the vessel

when she arrived, and by putting in his hand the policy of insurance so he would be safe if she did not arrive—then he would accept any draft in a business way.—Did the captain have to give his consent before you could do that?—Supposing I had the captain's draft against disbursements, I apprehend it could be enforced in New York against the vessel without any trouble. It would be a very unusual thing for it to come from the owners.—Do I understand you that you required the consent of the captain before you could consign the vessel to Nevius & Son?—No, I could consign the vessel.—Could not the policy on freights in Nevius' hands to protect him against any acceptance of your draft have been made payable after the arrival of the vessel?—I could do it for that purpose, but I think it would not be such protection as he would accept. It would not be the regular way. In my opinion it would not at all be as satisfactory as to get the captain's draft in the usual way. I do not know what Nevius would have done if I had asked him.

Mr. Thomson—Would not, in a case I have just supposed, Nevius & Son have been better secured against loss by accepting your draft than by accepting Captain Tower's draft for \$3,000 in this form:—

Fifteen days after arrival of the Brothers' Pride, at next port of discharge, pay to the order of Nevius & Son \$3,000, being advances made upon vessel.

Would it not have been better, the case I supposed, than a bald draft like this of Captain Tower's?—It is impossible for me to tell. He would be better secured, leaving out the question of insurance. I could not say the draft would be better security than the consignment of policies, etc., to Nevius & Son. There would be no absolute security in either way.—Then I suppose there is no absolute security except in bank notes?—I did not convey that meaning. \$3,000 on a vessel valued at \$2,000 would be pretty near absolute security!—Where does the draft on Tower give the slightest security to Nevius & Son?—That draft professes to be drawn for money spent on advances to that vessel. A claim in the New York courts of this kind I believe can be enforced as a lien *in rem* and the vessel sold for the claim. This is the way I understand the law of New York.—If Nevius took your word it was on advances?—Yes; and then he would have the captain's word too.—Why would he not take a draft drawn on yourself or Peters, if he believed the advances were made?—I had a right to give him the captain's draft. I ought to furnish him under the circumstances, I think, with the best possible proof of my claim.—Is it a common thing for ship-owners to collect the freights on drafts on their captains instead of collecting it themselves or through agents direct?—It is a common thing for the captain to make a draft on the freight to the order of the owners or ship's husband. The captain's draft is always taken for these disbursements because the draft will sell for more. It is the best bill you can have. I was going to give you an instance but you would not let me.—Did you not hear by cable that the insurance was effected?—Am sure there was no telegram or cablegram about the insurances. Am sure the cablegram of Jan. 2nd was not on this subject; it would not be natural for Belyea to cable the insurance.—When was the insurance effected?—The insurance could not be effected till the vessel was chartered and till he knew what the voyage was. That would be about the middle of December. If the vessel was going to leave eu-



tirely without insurance I think he would cable me. By January 1st would think she was insured by Belyea.—Do you recollect applying to Jarvis for insurance on freight in January, '79?—Yes, I recollect it. The body of it was in my hand writing. An application to the Anchor Marine Ins. Co. was then referred to. The body of it was filled up in Judge Palmer's hand writing. It was signed by Chas. A. Palmer. The application read in brief, as follows:—

Insurance is wanted by C. A. Palmer on account of whom it may concern, loss, if any, payable to Chas. A. Palmer. Vessel—Brothers' Pride. At and from Cardiff to Cienfuegos in Cuba. Cargo—coals; freight under deck. Repaired value \$2,000. Amount to be insured \$2,000. Rate \$3,000. Premium \$60.

On this witness recollected making application for insurance on the 9th January, 1879. He discussed this application with Mr. Jarvis or Mr. Loughead. He did not tell either of these gentlemen then and there that there was no insurance on the vessel. He did not pause a moment and then say, "I know of none, and don't think there is, because the vessel is generally run without insurance." The last clause witness said he did not say because that would be untrue. He told Mr. Jarvis or Mr. Loughead that there was none in America, but he told Messrs. Jarvis or Loughead that there was insurance in England on the vessel. Continuing he said: I remember saying there was no insurance in this country, but that whatever there was, was what Mr. Belyea had in England. I said this whether it was to Mr. Jarvis or Mr. Loughead. I recollect distinctly telling him there had been application by Belyea in England, and gave him honestly all the information I could.

Mr. Thomson—When did the \$3,000 advances begin and end? A.—Am under the impression it began in 1877. Paid disbursements in Shediak. The vessel paid nothing on these advances. She was paying off her debt very rapidly on the other side. Not one cent of this \$3,000 was on the other side.—Q. Take the freight in January, 1878, from Cuba to Philadelphia. Who collected that freight? A.—I did after paying disbursements. It went to paying disbursements at Cuba, Philadelphia, and here. I think that freight would not pay these three disbursements, but can't say. I did ask for a deviation clause in the North American Co.'s policy. On the 22d March had not received the missing letter from Tower when he made the applications for insurance in the Orient and Anchor; I took out the policy in the North American Co. because I had doubts that the insurance ordered through Nevius & Son had been effected; had not seen a letter qualifying the insurance by Nevius & Son previous to making the insurance in the North American Co. Nevius & Son are very good men and simply do business for me; if I read a letter from Nevius & Son that the vessel was insured I would believe it.—I see that you have put in a notice of abandonment of the vessel to the North American Company, notwithstanding you had given up any claim in March on Ranney, you put it in on May 14th.—I did that having signed a number of papers, with a number of others. I do not recollect having subsequently, or on the 23rd of May, served on the Company proof of the ownership of the vessel. I did not collect this policy. The note in payment for the policy was returned to me on the 26th February, and after the proceedings in this trial in the police court

commenced. Looked for a letter from Belyea & Co., January 9, 1879, and also for a draft of a letter ordering insurance, but could not, so far, find them. I have not looked for these documents personally, but I directed my nephew and son who know more about it than I do, to spare no pains to find the papers. It was no earthly use for me going to look as they could do it better than I could. The account asked for has nothing to do with this transaction. I receive on the average twelve letters a year from Belyea & Co. I told Jarvis all about the insurances, and dealt with him in good faith; I did not know that the Great Western required further proofs or more than one proof of loss.

Mr. Thomson—In a protest of the 3rd of September, before Philip Palmer, notary public, did you state that the vessel was indebted to you for advances \$3,000, and that this amount was insured in the Anchor and Orient companies on a voyage from Cardenas to New York?—I did, or intended to convey an impression to that effect. I did make a statement that I, personally, did not effect any insurance on the vessel save the \$3,000 with Mr. Jarvis. I understood the companies refused to pay because it was reported the vessel was unseaworthy.

Mr. Thomson—When you say that you meant to inform the Great Western Company that you personally had made the insurance effected, viz: two policies of \$1,500 in the Anchor and Orient, but that you did not intend your protest to refer to any insurance effected by you through your agents in England or elsewhere?—I don't say that I intended to inform anybody of anything except that I intended to make a statement and I did make a statement which would inform anyone who chose to look at it, that of any insurance on this vessel I only effected \$3,000 with Mr. Jarvis. I used language which in my mind can have no other meaning. The information would have to be filled up by others who actually knew. Did not know that accompanying it was the McLaughlin statement that he had effected no insurance, and that Mr. Charles A. Palmer made one out in the same day setting out what he had done. I made this statement because my son asked me. I did not know why. I did not tell my son that the insurance companies asked for a list of insurances from Belyea & Co. to give to the insurance offices. While this was going on information came to me that insurance companies would not pay.

Mr. Thomson—The agents ask what insurance you have. Do you think you would be justified in telling the insurance companies what you only did?—It would be wrong, but no insurance companies ever asked me for it. Continuing witness said: His papers pointed out what he had done as separate and distinct from others. He did not know then that the insurance companies refused to pay because she was over-insured. The point was that they resisted on the ground that she was unseaworthy.—Then why did you make a protest that did not touch her seaworthiness?—I did not make a protest at all. I made it in part, and would have got all the rest of the information only for the suit.—Then why did you not add, "my agents in England effected insurance," etc.?—Because the paper was not intended for that. That insurance would have to be got from Belyea himself.—Don't you know this minute that the case in New York is being defended because these proofs



are false and there is a *suppressio veri*?—No, it was not. Continuing witness said he did not read the answer put in to his action against the Great Western Ins. Co. The plaintiffs in this suit are A. L. Palmer, C. A. Palmer and D. J. McLaughlin. The defendants are the Great Western Ins. Co. Mr. Gooderich, his counsel in New York, has forwarded no information about the suit. Mr. Chas. Palmer has all to do with the suit.—Did not your lawyer, Mr. Gooderich, send you the pleas, etc.?—No; all the information I received was from my son Charles.

Re-examined by Mr. Kerr.—The suit was brought against the Great Western in September last, to recover the amount of the freight, the McLaughlin insurance and in all \$10,000. They have got the premium, \$150, and hold on to it. Witness had to pay it and they never offered to return it. When witness attempted to take Tower to New York as a witness in the suit against the Great Western, immediately this criminal charge was made against Tower.—And this is the way this New York company pay their risks?—I don't know, but that is what occurred. Tower was arrested and I was unable to carry on the suit. About the insurance and protests in the North American. That was the insurance that lapsed. When witness got the telegram apprising him of this loss he did not know he had any insurance on the vessel except on freight and \$3,000 on advances. He was flustered and, as a matter of precaution, gave a notice of abandonment to every one that could possibly be interested. He never made the claim, because he had ascertained his insurance was all right. The thing remained so till Ranney came to witness, wrote a receipt on the back of the policy and handed back the note. It was all done at his request. If the thing occurred again he would serve notices of abandonment in the same way. He said there was nothing in the accounts from Belyea & Co., of 1878, in reference to the insurance. There could be nothing in them in reference to this. The vessel did not arrive home until 1878. One of the accounts produced covers transactions one month before the vessel arrived in England. The accounts produced covered, witness said, a period over one and a half years and detail all the transactions he had or ever knew of with Belyea & Co. concerning the Brothers' Pride.

Witness continuing said: My accounts run from 31st Dec., 1878 to 31st Dec., 1879 continuously. The first account of the Brothers' Pride is closed with the voyage and carried into my private account. The vessel left England Jan. 5th, 1879. The first account begins October, 1878 and ends Jan. 30th, 1879, or after she left. The next transaction was the letter on April 5th and the item in the accounts is the extra premium.

Mr. Kerr.—Please explain how the first insurance was done with Mr. Jarvis, in Jan. or Dec.? A.—I went in March again, but the first time you refer to was for insurance on the voyage from Cienfuegos to Cardenas. This conversation was between Dec. 9th and Jan. 9th. I did not know that the freight was insured and had no information at the time, and told him I expected the freight would be partly covered by Belyea & Co., but I didn't know what amount. I also told him the vessel was usually run without being wholly covered by insurance. Heard of the loss of the vessel in May, 1879. I had information of the freight being

insured, \$3,000 by Mr. McLaughlin, of the \$3,000 I had with Jarvis, and that was all I was sure was on the vessel, freight or advances. I knew by the account with Belyea then that insurance had been effected from Cardiff to Cienfuegos and to a port north of Hatteras. I knew there was £2,100 on Cienfuegos to New York. She was going to Cardenas instead, and that this insurance would not cover. I had written to Belyea to change it, but having got no answer, I was in doubt as to its being effected when the vessel was lost, and I was afraid I had suffered a very severe loss. I was anxious about it.

Mr. Kerr—About a copy of a protest? Do you mean the statement Mr. Thomson asked me about? I can't remember the identical words of that statement, but presume I used words which mean I had effected no other insurance myself but this with Jarvis. I thought I used words which could not possibly be misunderstood. What I stated then I believed to be true then, and I now believe it to be true. Proceeding, witness said Capt. Tower, except with signing, had no more to do with the draft than Mr. Kerr. Tower had no notice as to the insurances. The protests were entirely distinct from Tower, who knew nothing about them one way or the other. My principal conversation was with Mr. Loughead, or the person Jarvis said was in charge of the marine department of his office.

NOAH DOWDELL was sworn. He has resided in Carleton off and on for 40 years. Knew Captain Tower for 6 years. Knew him to be a quite, peaceable man, and in borrowing and lending found him very consistent. He is not a talkative man; does not talk about his business. Would not take him to be a man who would commit the crime with which he stands charged.

Cross-examined by Mr. Thomson—Tower has considerably improved his house lately; has not been to sea since he came back in July, 1879.

Re-examined—He has property for years; always found him a careful, prudent man, disposed to lay up and improve his house lawfully.

Mr. Kerr said he would rest his case here.

Mr. Thomson said he had rebuttal evidence to call and enumerated the points of evidence he wanted to contradict. He would first call Howard C. Thomas to deny statements made against his (Thomas') character by Smith, Towers' brother-in-law. He also wished to produce witnesses to prove that the air-streak in the vessel was not in the location that the defence say it was. He would also produce witnesses to contradict Judge Palmer's testimony, especially Mr. Jarvis.

Mr. D. S. Kerr replied and contended that as far as Silas Smith's evidence was concerned there was no time or place, when or where, or conversation in his testimony for Thomas to base a contradiction of statement. In regard to the air-streak it had been thoroughly discussed when the case for the prosecution was open. In regard to Mr. Jarvis' contradiction of Mr. Chas. Palmer and Judge Palmer he would say it did not concern his client.

Mr. Thomson said the defence had not located the air-streak in the vessel, but they had produced evidence to prove where an air-streak would likely be in a vessel like the Brothers' Pride. Mr. Jarvis' testimony will go directly, he said, to Judge Palmer's credibility.



Mr. Kerr replied again, and claimed the prosecution had gone into the location of the air-streak thoroughly through Capts. Smith and Morris and the mate, Roberts. If the case goes on this way it will never come to an end.

His Honor said in regard to Thomas, he understood that statements in fact were to be contradicted. In regard to the air-streak, he would have to refer to his notes in order to decide upon that point. In regard to the contradiction of Mr. Palmer, he thought testimony to that effect admissible.

HOWARD C. THOMAS was then recalled and sent for at his quarters in jail. Thomas on taking the stand said he knew Silas Smith ; never told any lies about Smith.

Mr. Thomson—Well, what was the quarrel ; the trouble between you and Smith ? Why did Smith leave the vessel ?

Mr. Kerr—I object to that.

His Honor said that witness had gone as far as he properly could. If he allowed him to go further he (His Honor) might regret it.

Mr. Thomson—Well then, Your Honor, I cannot then ask witness about the space between the air-streak.

Mr. Kerr—Oh ! oh ! that's monstrous.

The jury then proposed through Juror Roxborough, a question to be put to the witness. The question was written on paper and handed to His Honor. Mr. Kerr objected. Allowing him to be interrogated by the jury would be a dangerous proceeding. It would upset all that has been already testified to. He knew the juror did not mean any harm, but he felt the enormity of harm it would occasion. The jury said they would not press the question.

His Honor said they could not put the question. The counsel, however, were bound by his notes, but if the jury heard anything different from what was in his notes, they could use their own judgment as to what the witness said.

Juror Roxborough said there was a difference among the jury about a certain statement made by Thomas.

C. E. L. JARVIS was then recalled..

Mr. Thomson—Mr. Chas. Palmer said that on the 26th or 28th July or about 60 days after the preliminary proofs had been made, that he, Chas. Palmer, applied to you for the amount of the policy on advances, \$3,000. Did he or not ? A.—I remember Mr. Palmer coming into my office ; but he did not ask me for the \$3,000 ; he asked for the amount in the Orient, \$1,500. This was on the 28th July. He did not tell me that the freight was insured for \$5,000, and that it was valued at that amount.

Mr. Thomson—Did he tell you on that occasion that there was no other insurance on the freight than \$5,000, and that there was a policy in the North American Co. which did not cover the voyage ! A.—He said there was \$2,000 on freight in Mr. Ranney's office. Mr. Palmer did not say the North American policy did not cover the voyage. I learned that fact afterwards. Chas. Palmer came to me on the 28th July, 1879, and asked for a check for the amount of insurance in the Orient Ins. Co. I replied I had no authority as yet to pay the amount.

I also told Mr. Palmer that the Solicitor of the Anchor Marine Ins. Co. had forwarded a list of queries which I would like him to answer. I then took the list of queries and read them to Mr. Palmer and took Mr. Palmer's answers..

To Mr. Kerr—Did you put down all the answers Mr. Palmer made? A.—I did not; I just made a short memoranda. To some of the queries there were no answers made. I read the questions over to Mr. Chas. Palmer and made pencil memoranda which enabled me to extend them afterwards. I asked Mr. Palmer the names of the owners of the vessel. A. L. Palmer, D. J. McLaughlin, jr., and himself, Chas. A. Palmer. I asked him what encumbrances, if any, were on the vessel. He said none. I asked him the circumstances and nature of the application, by whom made, and when and where. He said upon disbursements, that the vessel owed his father money, that they were made from time to time and extended over several years. I asked him what other insurance there was, and if any, on vessel, cargo or freight, by whom effected and in what companies. He said there were \$2,000 with Ranney on freight, that the freight on this voyage amounted to over \$4,900, and I made a memoranda like this: Freight, \$2,000; advances, \$3,000; total, \$5,000; freight, \$4,900. Mr. Palmer did not say she was insured in the Great Western in New York, or anywhere else for \$5,000. The only mention of any insurance on the freight was the \$2,000 with the North American Co. Mr. Palmer did not tell me this policy did not attach.

Mr. Thomson—He led you to believe this was a valid policy?

Mr. Kerr—Now stop, stop, never mind what he led you to believe. I know that Mr. Thomson would like to have Judge Palmer convicted if he could. Witness proceeding, said, I had a conversation with Judge Palmer on the 8th or 9th of January, which was, that Judge Palmer came into my office and asked me to insure \$2000 on the freight of the Brothers' Pride from Cardiff to Cienfuegos. Then he went on to tell me the favorable points of the risk, and told me that he had put considerable repairs on the vessel, that she was a good strong vessel, and that there was no insurance on her. Then he qualified that statement that there was no insurance on her by stating that he knew of none, that he did not think there was any on her at this date, and that he generally ran her without insurances.

His Honor put a few questions to witness referring to his notes. Did Judge Palmer say there was no insurance on the vessel? He did.—Did Judge Palmer then pause in his speech, and say the vessel generally ran without insurance?—He did.

To Mr. Thomson—He did not say to me there was no insurance in this country. He did not say to me whatever insurance was effected in England was effected by Belyea & Co.

Cross-examined by Mr. D. S. Kerr—I have not stated all that Mr. Palmer told me on that 27th July. I had quite a conversation with Mr. Palmer. Mr. Philip Palmer informed me by letter on the 16th August, that \$5,000 had been insured on the freight. Mr. Charles Palmer did not give me the same information on the 27th July, nor Judge Palmer. I had not paid any of the insurances to Mr. Palmer at this time.



At this point Mr. Kerr made a remark which witness considered a slur on his veracity. He wanted to prove that his statements were true by producing a letter he wrote to the Orient Ins. Company.

Mr. Kerr—You had better take care, sir, or I will apply to the court to commit you. The court stopped Mr. Kerr, who said he was horrified at the miserable slanders going on and thrown at him. He never wanted to be in such a case again, and would rather give up his position at the bar than pass through such a foul shower of slander again. Witness left the stand.

His Honor said he had examined his notes and found there were only two or three witnesses asked as to the location of the air-streak. There was nothing shown by the prosecution where the holes were bored, but this he thought did not preclude the prosecution from producing evidence upon this point.

Mr. Kerr—Will your Honor reserve the point for me? The court replied that it would.

Mr. Thomson wanted Thomas' statement about the  $1\frac{1}{2}$  ft. space between the timbers cleared up at the same time.

Mr. Kerr claimed that this could not be done. Mr. Thomson said there were vessels lying in port now having 6 and 7 in. between the timbers in the air-streak. He said he could prove that there is frequently a space between the timbers of 6 and 7 inches. Mr. Kerr said he could call 100 witnesses to prove how far apart the timbers were in other vessels; it would be great injustice to overturn the evidence in this way.

His Honor said Captain Vaughan and other witnesses gave general evidence on this point. He would, however, receive evidence as to the probable space between vessels' timbers, but he would not receive any evidence to corroborate Thomas' statement about the  $1\frac{1}{2}$  feet space.

JAMES G. PURDY of Grand Bay, Lancaster, was called. He is a ship carpenter of 21 years experience. His examination was conducted by Mr. Alward. He knows the barque C. E. Robinson, about 500 tons register. She has a hurricane deck and he examined the streak in the lower hold at the mizzen-mast; found 6 inches between the timbers—clear space; Mr. Alward was with witness when the measurement was made; made also the measurement before he saw Mr. Alward. As a general thing in other vessels the distance is less than 6 inches; has seen the space larger, but it was doubtful if they would pass Lloyds'. There is a wane sometimes in the timbers in the streak, and if the vessel is round a root has to be used. This causes a larger bay.

Mr. Alward—What are Lloyds' rules in reference to building ships? Mr. Kerr objected and after some argument the court overruled the question. Witness, proceeding, said if the timbers were 14 in. it would necessarily take a space of 30 in. to contain the frame. This 30 in. is a space for two timbers and two spaces. Mr. Alward wished to produce a plan of an ideal of the Brothers' Pride. Mr. Kerr objected.

His Honor thought the plan admissible. He always thought it proper for a witness to illustrate his evidence by plans. Witness, proceeding, said he drew the plan on depth of shoe 6 in.; of keel  $13\frac{1}{2}$  in.; of floor timbers 13 in.; thickness of ceiling 5 in. If she drew 14 ft.—load water line—the air streak would be 2 ft. 1 in. below load water line

amidships. The usual shear of a vessel of this size varies very much, from 20 to 30 in. The shear from amidships to the stern would be from 20 to 30 in. Between the mainmast and mizzenmast at 20 in. she would be 9 in. higher from amidships to the mizzenmast; if 30 in., there would be about 12 in. between these points. Between mizzenmast and midships there is no taper in a single clamp. If two the lower clamp would taper about 1 in. It would be 13 ft. 3 in. from the shoe to the top of the air-streak at the mizzenmast. If an auger hole was bored through the air-streak at right angles of the ceiling it would come lower outside than inside. By calculation, he said a straight boring would be 9 in. below load water line.

Cross-examined by Mr. Kerr, witness said he built a vessel at Milledgeville of about 600 tons. He knew nothing about the Brothers' Pride. He gave the preceding measurements from his own instructions and those he received from Lloyds. If the Brothers' Pride was built of timber adapted for a vessel 100 tons larger such timber would require cutting down instead of piecing out. Made no calculation on the plan for the load water line but the 14 ft. draft, and that line would be about the same. If she drew 7 ft. unloaded that would be 7 ft. from the shoe.

Re-examined by Mr. Alward—He allowed 12 in. for one clamp and 11 in. each for two. The calculation he made was in the very upper part of the air-streak. At this point Mr. Thomson inquired whether he had not a right to prove the rules laid down by English Lloyds for building a ship and submit them in evidence?

His Honor said only the rules at the time the vessel was built would be evidence.

ROBT. LOUGHEAD was recalled. He said he had no conversation with Judge Palmer in reference to an application for insurance. He had with C. A. Palmer. Q.—Did Judge Palmer ever tell you he effected insurance on the vessel in England through Belyea & Co.? A.—No; he never told me that. I knew of no other insurance than that made with me. If I had known that I would not have taken the risk.

JOHN STEWART, shipwright, was recalled. He said he had seen spaces in timbers in air-streaks, abreast the mizzenmast, 5 and 6 in. in width. Waness very often occur in the timbers but do not always extend all the way through.

Cross-examined by Mr. Kerr—He never knew the Brothers' Pride. There is no rule about clamps. The air-streak comes in place in the construction of the vessel. If there were two clamps it would be lower than if one clamp. There is no rule set down for the location of the air-streak. With a stringer and one clamp the air-streak would be below the lower side of the deck 30 in.—taking the deck 8 in., the stringer 10 in. and the clamp 12 in. The depth of hold is 12 ft. 11 in.; ceiling 5 in.; floor and bridge 12 in.; keel 1 ft. 1 in.; and shoe 5 in., which makes 15 ft. 10 in. The crown of the beams is 5 in.; the ends of beams 8 in.; breadth of stringer 12 in.; clamp 10 in., makes 2 ft. 11 in. This taken from 15 ft. 10 in. tells where the air-streak ought to be—1 ft. 1 in. below the load line. This calculation is amidships. Allowing for the sheer at a point 19 ft. from the stern in the hold the air-streak would be 7 in. below the water.



Re-examined by Mr. Alward—Witness said he referred to the upper part of the air-streak in his calculations. He has been a shipbuilder for 39 years. Mr. Thomson said he would call Mr. Cleveland to prove how many bottles of melado were used at the Police Court inquiry.

Mr. Kerr said there was no evidence Mr. Cleveland could go into. The evidence was allowed.

MR. CLEVELAND again took the stand. He said he was present at the police court during the taking of 'Thomas' and Roberts' testimony; took three bottles of melado to the Police Court and left them in charge of a sergeant. One bottle was upset and the other two were used in evidence.

Cross-examined by Mr. Kerr—He did not hear the magistrate tell the police clerk to "take care of this bottle."

SILAS ALWARD, one of the counsel for the prosecution, was sworn. He said there were two bottles used in evidence at the Police Court; left the bottles at the Police Court; did not take charge of them.

Cross-examined by Mr. Kerr—There were two bottles used in evidence; never took them out of the custody of the court. [Bottle produced.] Witness heard Trisinski say the contents of one bottle looked like melado; did not think Trisinski took the cork out of the same bottle and tasting it say it was melado. He remembered distinctly that three bottles were brought to the Police Office and that one was upset.

Mr. Pugsley then announced that this concluded the evidence in rebuttal and the case closed.

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### The Counsel's Addresses to the Jury.

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On opening the court in the morning, Mr. S. R. Thomson, on the question of concealment, cited 1 Arnold Insurance 549-550, as to the duty of the insurer in communicating facts to the underwriter when insuring the vessel. Every concealment of material fact by the insurer voids the policy. He also cited 1 Arnold on Insurance 332, 333, as to the information acquired by Mr. Charles Palmer. On the same point he cited Bruce vs. Jones, 1 Hurl & Col—768; 2 Arnold 1071 was cited also, and 1 Arnold, p. 5, on the question of good faith.

Mr. John Kerr cited Rex vs. Noates 5 C. & P. 326, as to the evidence of an accomplice not being sufficient to convict without confirmation. Also Rex vs. Webb, C. & P. 595 on the same point, and Rex vs. Wilkes 2 Edwards, 7 C & P. 272. Per Alderson Baron, that the confirmation of an accomplice as to the commission of a felony is no confirmation at all. Regina vs. Farer, 8 C. & P. 106 on the same point. Regina vs. Dyke 8 C. & P. 262. He also cited Haddon vs. Parry, 3 Taunt 303, on the subject of a bill of lading, to show that it is not and how far it is an evidence of property in the goods shipped. Also Jessel vs. Bath, 2 L. R. Ex. 267 on the same point, and Lebean vs. General Steam Navigation Co. 8 L. R. C. P. 88. Regina vs. White, 4 Foss & Fin. was cited on the question of the evidence of an accomplice.

MR. D. S. KERR then closed for the defence. He commenced by expressing his delight at the approaching close of a most wearisome and responsible undertaking. Such a responsibility he would never undertake again, for although he had been nobly assisted by his young associates, Mr. John Kerr and Mr. Chas. A. Palmer. the main responsibility had rested on him. He referred to the long and wearisome labors of the jury and said that he would endeavor to make his address as short as possible. He desired at the outset to call attention to the character of this case.



It was ostensibly a Crown prosecution, but the real prosecutors were the insurance companies. Yet by the use of the Queen's name the mouth of the prisoner is shut. He showed the difference between a *bona fide* Crown prosecution and such a case as this. In this case the prosecutors are two vile perjurers, Thomas and Roberts, men who acknowledge themselves up to the very throat perjurers, and they combine to make information with Mr. Cleveland. This accusation is made by paid witnesses, by men whose credit is not worth a straw. Who ever heard of such a proceeding as this before? Mr. Cleveland had been regularly paying these witnesses up to this day, for the purpose of procuring a conviction against this man. This was a fact proved by himself and by these witnesses themselves, and here was Mr. Cleveland drilling these witnesses in New York, and interviewing them in jail, and bringing in new testimony from the same perjured source. He said that the prosecution seeing that their case had failed, had commenced to bully the jury. It is a monstrous state of corruption, such as never known before. He referred to the injustice of the accused being tried thousands of miles away from the witnesses who might have proved his innocence. He asked how it came that the private transactions of captain and Mrs. Tower with the Banks were brought to light contrary to all the rules of these institutions? He referred to the charges that had been made against one of the jurors, Captain Letteney, against whom the great charge was that he had said he would not believe Thomas. Great heavens! is there a man or woman in the whole country that would believe him? He animadverted on the manner in which Judge Palmer's insurances had been mixed up in the case to the great lengthening out of the trial. The men who imported this into the case were the underwriters in New York, who were at their old tricks, and who were endeavoring to get rid of their liabilities. Just at the time that Judge Palmer was bringing the suit for insurance against the Great Western Insurance Company, Captain Tower, his witness, is arrested and the suit stopped. An enormous expense has been put on the country, jurors and judge put to great inconvenience, and the whole business of the Chief Justice's division of the Court stopped in order to enable the Great Western Insurance Company to escape a just debt. He would contend that if the evidence produced at the inquiry in New York had failed, that the prosecution must fail here, and in support of this cited Arch. Crim. Law 299, as to the credibility of witnesses. Thomas, Roberts, Hall, and Trisinski, were four scamps who had lied, and whose word was of no value. He did not envy the Chief Justice on the bench, and apologized to him for all rough things he had said. If he used the Creator's name hastily during the trial, he had not used it irreverently. He would walk through the evidence of these four perjurers, and that done he would throw the rest of the evidence to the winds. He then referred to the indictment and called attention to its extraordinary character, reading it, and commenting on its principal features. Tower was accused of scuttling the vessel "feloniously with intent." Therefore, it must be shown that he knew of the insurance or the prosecution failed. Ah, but say the prosecution, Thomas will prove that, he is the man who supplies all our wants. The prosecution is, in fact, an attempt on the part of the insurance companies to keep Judge Palmer out of his just rights, and they are really asking a jury to try out a case of insurance between them and Judge Palmer. But what has the prisoner to do with Judge Palmer's insurances? He spoke of the horror he felt at the awful perjuries of Thomas which had been brought forward on behalf of the prosecution. We may well pray of the great Author to deliver us from evil. The land is infested with such demons; I am no ordinary coward, but when Thomas came in, a horror crept over me. I begged that the poor miserable wretch might not be questioned. After we had replied to the case, he was recalled, and he would, if allowed, have sworn down all the defence set up. They were able to hold his own confession over his head, and held him in terror, so that they could make him swear to anything. Taking up the 2nd count, "against the form of the statute," he asked how much the Great Western Company cared for the form of a British Statute? Palmer, father and son, do not believe in Tower's guilt, and they give him the character of a good and faithful servant; than which they could do nothing else. "Did set fire to the said vessel with intent to defraud the companies," &c. Set fire to the vessel? Ah, gentlemen, they knew that charge to be false! False, by the testimony of all their witnesses. After schooling 40 days that scamp got \$5 a day "to pitch honor" to the winds. If he does not please his masters the



Lord knows what will become of him ! A man on board ship is charged with felony ! Boring holes ! who heard the noise ? who saw the holes ? The mate swears in his purified conscience, that he saw nothing, but applying his memory to the situation says he heard the contents of the casks swash ; swears the contents was thinner than melado and he had never seen melado before. "Knowing the lack of energy of the captain," says the mate ! Ah, I put on good sea proof to meet this, to show that Tower had done the best a captain could do, that he had navigated her as if on her safety depended his eternal salvation. Another count is that Tower did feloniously "scuttle" the Brothers' Pride, the property of Palmer and McLaughlin ! Who brings this charge ? Not the owners ? Oh, no, they defend the captain. Who is it, then ? Why, John Crosby Brown. And who is John Crosby Brown ? He is the Almighty Dollar ! These insurance companies are back of Brown. He admired the Americans as an agreeable, pleasant people ; but when it came down to money matters, they liked nothing better than to "come it over us" poor Provincialists. The Queen pays her own officers ; but down comes Cleveland from New York to show the Queen she is not to go on in her old jog-trot way ; that that is not the way to conduct a Crown prosecution, but that she must take a wrinkle from the Great Western Insurance Company ! How did it happen, if this vessel had been scuttled, as Thomas swore, that no one heard the sound of the water rushing in ? He had shown by the best of sea testimony that the vessel was as well navigated by Tower, as a vessel could be. As to the burning of the ship, it was right to burn her, for she was a danger on the seas. If a man leaves a ship right in the track of shipping on the high seas, a vessel wholly disabled and incapable of being saved, he is bound to set her on fire. He had no doubt that an action would lie at the suit of a person, whose vessel had run into and been injured by a collision with the wreck, against the owner. Therefore the charge of setting the vessel on fire was hopelessly gone. A vessel with 11 feet of water in the hold and hopelessly gone, what else should be done with her but to set her on fire. If the prosecution could not prove that the vessel was set on fire by the captain maliciously this part of the indictment failed. The prisoner was charged with what he called "murdering a ship." What probability is there that a man would scuttle a ship and endanger his own life in a place 57 miles from land ? If a man was proved guilty of such an offence he should be punished capitally, but the enormity of the crime should make the proof necessary to convict of the most conclusive character. He contended that it was immaterial whether the cargo of the vessel was melado or not, as stated in the bill of lading. The bill of lading said "weight and contents unknown." That meant that the master had only to take notice of the number of the casks ; he had nothing to do with their contents. He had therefore taken the responsibility of calling no witnesses as to the contents of the casks, and therefore he felt that he could safely dismiss the whole of that evidence. He then turned to the testimony of Hall, Thomas, and Tracey C. Roberts, whom he described as a "horrid wretch" and a "perjurer." If the oath he took in New York was of no value, neither is his testimony here of any value. They have been bribed, they have been bought ; they are rotten to the core. He commented on the fact that this witness had been paid to give his testimony, and he defied the prosecution to name a precedent for this stew of rottenness and iniquity. He cited the dictum of a celebrated English Exchequer Judge on this point. No corrupt means must be taken by a court of justice for the purpose of making the machinery work. He denounced as preposterous the contention that the captain was responsible for the quality of the melado with which his vessel was loaded. He referred to the evidence of the witness Melian on this point, and described him as a great scamp, wholly untrustworthy. He proceeded to comment on the evidence of some of the witnesses briefly. He had a favorable view of humanity ; never saw a man all good and never one all bad. As the poet says :—

"The web of our life is of a mingled yarn, good and ill together."

He had seen felons in prison, but they were not all lost ; some displaying that which would make one weep. How many people would be relieved in presence of the Almighty judged not by a human standard. He had sympathy with the robber who stole a horse ; and gave a sketch of Dick Turpin's minuet with a lady he robbed on Hounslow Heath. Turning from this, he asked, does Tower look like a man who would scuttle a ship ? Does he look like a felon ? But suppose Tower was such a villain as he is painted by Thomas, is Thomas not lost to all sense of



gratitude to tell it? He then blamed his client for not informing him that he had taught this fellow navigation, but let it be dragged out of the witness, Smith. Yet that vile wretch has brought up those very books of navigation to show that Tower bribed him. Did you ever see such a spectacle in the lowest walks of life? He is prepared to do villainy whenever bribed. He has no more sense of morality than the brute beast! Suppose Tower told him to bore the holes, did that justify him in the eyes of God and man to do the deed? Continuing, he referred to the taciturn character of Captain Tower, which had kept him in perfect ignorance of many matters which he should have been informed of, and which were important to his defence. He instanced the accusation which had been made against Tower of spreeing away with the mate when the ship was at Cardenas, from Friday afternoon until Sunday morning, but he had not been told until after the case closed, that the distance which Captain Tower had to go from the Cays to Cardenas was 14 miles in a rough sea and in a small boat, and that he had made unusual haste in getting back, considering the distance he had to go, and the amount of business he had to do. He dwelt on what he termed the remorseless, dishonorable character of Howard Thomas, who had none of those noble and manly qualities which are often found even in the greatest criminals. As the boatswain, it was his duty to take charge of the ship in the captain's absence, and still this fellow, Thomas, with no gratitude, no shame, brings in charges to damn the man who had befriended him. When Slaven and Breen were tried tears rolled down Judge Parker's cheeks as Slaven told how he murdered the little children. One of them, Breen, was a hardened wretch. He went to Fredericton to murder old Sally Golly, but his courage oozed out and he felt a manly pinch of conscience. He went away without doing it. When sentenced to death, people wept at his deep remorse, that his poor mother would be killed by the act. We find that even that man had elements of nature which if cultivated would have made a noble man. But where is Thomas' good qualities? where his gratitude? He did not explain when these books were brought into court that they had been given to him by the man who taught him navigation, and if Tower really had that wickedness in his heart to go and destroy his vessel, is it likely that he would be apt to go and blab it in this way? He was glad that there was one ship master on the jury, and he thought that a jury composed of ship masters and ship builders would be the most proper men to try such a case. The statement of Thomas that Tower wanted to run the vessel on a rock near Cape Antonio was absurd and incredible. All the policies except McLaughlin's and Chas. Palmer's were for a voyage from Cienfuegos to a port north of Hatteras, whereas at this time the vessel was on her way from Cienfuegos to Cardenas, and had therefore deviated from her voyage, and if lost there, would have been totally lost to the owners. Therefore it was incredible that Tower should have tried to cast her away. He referred to the log book kept by Roberts, and asked if such an occurrence took place near Cape Antonio why it was not in the log book? With regard to the statement of Thomas that the captain had offered him \$100 to scuttle the vessel: why was the captain such a fool as that? The captain was a pretty strong man: he was able to handle an auger, and he could have scuttled her himself. Instead of this, contrary to his usual taciturn habits, he had to go and make a confidant of this rascal, Thomas. Was that probable? Why should he, with time and opportunity in his favor, take another man into his confidence to aid him in committing a felony? The thing is incredible; we must bring our common experience to bear on this and judge of it. Thomas stated that the captain told him to get an auger the size of a treenail, so that if they picked her up they would think a treenail had come out of her. Was that a sensible proposition? Who was there to pick a vessel up after she had sunk in the bottom of the sea and examine why she had sunk? The reason given was most improbable and absurd and the statement of Thomas entirely incredible. But the boring of these holes must be confirmed by other witnesses or the statement of Thomas must go for nothing. He read the evidence of Thomas giving an account of the boring of the holes in the vessel. All the evidence which Mr. Pugsley relied on in opening as confirmation of Thomas' evidence had failed. According to Thomas' own statement the boring occupied two days, yet during that time Tower made no preparation whatever for leaving the ship or ensuring the safety of their lives. Is that probable? All Thomas' evidence was given as if he had learned it off by heart. Thomas says the captain told him the vessel was insured for three



times what she was worth, and that old Palmer had written him to sink her. Was it not surprising that a statement of that kind, one so important, had not been given at the Police Court? Referring to the insurance he said that the underwriters in England and elsewhere encouraged the insurers to place a high value on the vessels. The insurance companies want large values because they want large premiums, but when it comes to paying losses, the affair assumes a very different aspect, and they send their clever young man, Mr. Cleveland, to get up a case against the insurer and to fight off the claim. But an accuser must come into court with clean hands, without corruption and without bribery, if he expects his statements to be believed. Mr. Kerr proceeded to read from Thomas' evidence as to his alleged conversation with Tower relative to scuttling the ship. Tower told Thomas not to tell of this as it was, he said, a case of transportation—14 years in the penitentiary. This looked like a legal suggestion, and not like a sailor's idea. Thomas says, in his evidence, he discussed with Tower how he should destroy the vessel—to cut through the deck under the captain's bed. How could this be kept a secret; can such a statement possibly be credible? Could any one believe it? Just take the reasonable probabilities; take the perjury out of the question; take the evidence sworn to at this trial and could a conviction be made out? He would rely upon the Naval Court proceedings as an entire bar to the indictment in point of law and in point of fact. Mr. Kerr then proceeded to cite Lee on the Merchants' Shipping Act, 262, 263 and 264. He contended that the Naval Court proceedings were a judgment *in rem*, and conclusive between the parties. He challenged the four counsel on the other side to show a precedent for this trial. It was wicked for them to knock up the whole country for such a case, to put us to such enormous costs for the sake of the Great Western Insurance Company. He then quoted from *Rex vs. Teal*, 11 East, in reference to the credibility of a witness who has sworn falsely. He believed that though Princes could not be trusted, happy is the man who can place his faith in God. A lying tongue is an abomination to the Lord. He believed one of the greatest things that should be preserved sacred—held sacred in the administration of justice—is an oath. A witness testifies, so help him God! Is this a form or a reality? Is there a doubt, gentlemen of the jury, that there is a God? The oath is the greatest anchor of our safety. He then turned to the evidence in the Naval Court—H. C. Thomas' testimony given, as he stated, twenty-four hours after he thought his life was in danger. If there was any time that a witness could tell the truth it would be at such a time. He says he first noticed the ship beginning to make water on Tuesday, and at noon he sounded the pumps, and she then began to make more water, and at midnight the men asked the boats out. This, Mr. Kerr claimed, was a natural account, but the tendency he feared in this age was for young people to lie. The schooling of children, he felt was at fault in not urging upon children more the great sentiment—Truth. Continuing he read Thomas' statement about the thunder and lightning the night of the wreck, and quoted from Shakspeare's *Tempest* the words of Prospero:—

“To cry to the sea, that roar'd to us; to sigh  
To the winds, whose pity, sighing back again  
Did us but loving wrong.”

When on the stand the four gallows creatures who accused Tower would not look at the jury but turned their heads away especially Thomas, and when he was asked if his evidence given in New York was true, he answered it was a lie. This was a recollection all free and fresh on one side and their rascality shined in them. The mate, himself, has acknowledged the Gulf a stormy place. Mr. Kerr then read portions of Roberts' testimony before the Naval Court. Roberts says he pumped steadily, and it was clear and plain they could not bail the water. Mr. Kerr could not see how Mr. Archibald had censured his client. Mr. Archibald is a man unacquainted with the sea. Ten good men may be called on one side and give different accounts. There was a difference in opinion among the crew as to the time the pump broke down. But no two men see alike. Matthew, Mark, Luke, and John do not state what they saw exactly the same. He then proceeded to read further from Roberts' testimony. Roberts says there was not much use to put the vessel into any port at twelve o'clock, though he says they tried to get her into port. This was, said Mr. Kerr, a spontaneous answer. Roberts says he saw her “chuck” herself and go down under water. Previously he sounded the pumps



and found 11 feet of water in the hold. These were natural statements. Thomas says he was ordered to set fire to the wreck. This was right, Mr. Kerr claimed, and adding he said, if it was not feloniously done, it was his own matter. He then turned to Tower's evidence and said, "Let us see the lies in it that the prosecuting counsel have said there was," and stated that witnesses could have been brought from Cardenas, if necessary, to prove that the article in the vessel was melado. He spoke of the bill of lading, which was the captain's voucher. The charter party in Mr. Palmer's possession was only a copy, and, Mr. Kerr claimed, copies of papers were not reliable—therefore he had not allowed it to be used in the case. Tower says that at the time of sailing the vessel was in good condition; this every prudent mariner thinks, else he would not go to sea in his vessel. Tower further says, when sailing the weather was fine; that he had not the log-book; it was in the possession of the mate, and was lost by the upsetting of the boat on the coast of Florida. The mate has, said Mr. Kerr, made several contradictory statements about the log-book. Tower again says the mate kept the log, and that the vessel had no official log. In the evidence it says there was a chopping sea, and it was quite probable and reasonable, as the current and wind were in opposition to each other. There are a great variety of ways in which a vessel may spring a leak. And what do men insure for, if it is not against loss? Taking up the log of the *Brothers' Pride*, Mr. Kerr remarked that it was a very incorrect way to keep a log. Roberts, the mate, had made contradictory oaths; mocked his Maker about this log; came forward with lies in his mouth about it. In it Roberts gives no account of the weather from Monday afternoon until the following Wednesday, the time of the abandonment of the ship. Is this the way a man attentive to his duty would have done? Immediately after being pitched on shore on the rocks as high as the sea could vomit him, he goes before the notaries, etc., and swears he has lost it. Mr. Kerr then cited Kay on shipmasters and seamen, p. 363, in reference to the bills of lading. Tower had no right as captain of the vessel to invade one of the casks of his cargo. The bill of lading read, "weight and contents unknown." If the material was known to the captain as extraordinary a different feature would be presented. But there is, Mr. Kerr claimed, no evidence that the captain had the slightest suspicion as to the contents of these casks. Captain Rouse on the stand at this trial had said that the statement in the log book, "people constantly at the pumps," indicated heavy weather. Mr. Kerr then referred to the protest made before Mr. Hughes. The captain is bound by law to take his men to make a protest in case of wreck. Did the mate object to making his statement before the attorney? No. But since he had said he would take money, and pitch honor to the winds, sacrifice his oath, and deny his statements made before this inquiry. The mate did not contradict the captain before Hughes; though he hated him bitterly. No, Roberts now getting \$74 a month, thinks it better to walk about than to speak the truth. Judas was a king to him, for he repented and returned the thirty pieces of silver. But when the protest was made before Hughes, Satan had not entered into the heart of Roberts; the tempter was not on hand then. Thomas and Roberts are past being saved, and will never be true men this side of eternity. The protest says "crew constantly at the pumps." The log says "crew constantly at the pumps." Why this similarity of statement? Because it was heavy weather, and both statements are made as relating to Tuesday. And nine men confirm this statement. The protest says the vessel strained heavily, and had 12 feet of water in her hold at midnight; that the starboard pump broke, and that having no reason to stay by the barque, they went off to the coast of Florida 50 miles distant; it comes out that it is 57 miles distant however, said Mr. Kerr. It further says the log-book was lost on the Coast of Florida, and to this the mate makes oath, knowing at the time it was in his trunk. Was not this a deliberate falsehood? These proceedings in the Naval Court are of an International character, and they are conclusive against the present proceedings. He would be obliged to any one who could produce an authority to show it otherwise. This protest was drawn up by Mr. Hughes, and signed by the whole nine members of the crew. There is no geeing or hawing about that. It is a palpable perjury. No two opposite records can be established by perjury, and he put it to the Chief Justice that these proceedings were something or they were not, they were protective or they were not. He intended to stand on these proceedings, and on the evidence given immediately after the wreck by men who had just escaped death,



and not on the corrupt and perjured testimony which had been given to convict this man, by four perjurers. He did not think he would ever live to see such a disgrace perpetrated upon our British Constitution, even by New York influence, and he would be sorry that New York even should think that there was such corruption amongst us. He continued to read the captain's evidence, given before the Naval Court, and commented on it contending that it bore internal evidence of being truthful, and that it agreed with the evidence then given by the rest of the crew. The captain in his testimony said he did not know what to attribute the leak to—a fair and honest answer. She sprung a leak somewhere under water, and they could not get down below the water to find it, as she was full of cargo. The leak must have been below the water line; it did not come into her top sides. Why should she not spring a leak, a vessel 13 years old, and in a chopping sea? The captain's story was consistent with itself and with truth. If he had been guilty of scuttling the ship he would have endeavored to account for the leak and to explain it. He would have related how she leaked coming out from Cardiff, and would have constructed a plausible theory to account for the ship leaking. The fact that he did not do this is the best evidence of the truth of his story. He stated that he was utterly ignorant of the insurance on the vessel. Indeed he could not have known of the insurance. Mr. Kerr here read the captain's letter of 5th January, 1879, written from Cardiff, which was, he claimed, quite inconsistent with such a crime as he was charged with. The next letter was dated April 17th, the intermediate letter being lost. In this letter he said he had obtained the best freight by about 37½ cents that had gone to the Island that year. That was scarcely the kind of expression that would be used by a man who contemplated such a crime as he was charged with. It was the natural expression that a faithful servant would use who had done well for his master, and bears the imprint of a man doing his duty! Why would he want to take such an infernal turn against righteousness? Why blast his life for ever? No, he can say, "while I have lived I have done my duty to my masters, never wasted their substance." In this letter he said he was loading with melado for New York or Philadelphia. The next letter was written after he had loaded and the day before he expected to sail. It contained nothing to suggest an intention to cast away the vessel. It was a simple, short business letter, and none of the letters had one word about insurance. When the protest was made and the Naval Court of Inquiry held, the control of the master over them had ceased, he had no authority to coerce them, and where was the inducement to cause these men to commit perjury? No one had been training them for forty days to tell a false story. He did not know who was the guilty one, but it is clear that some one had been guilty of subornation of perjury. He read from Russel on Crimes to show the nature of subornation of perjury, and the punishment to which those guilty of it were liable. He also cited the recent case of Regina vs. Hughes in the Law Reports on the question of perjury, which showed that a conviction obtained on evidence subsequently shown to be perjured was not set aside, but application had to be made to the Secretary of State to relieve the party from the consequence of the conviction. That being so, the finding of the Naval Court in New York, even if the evidence before was shown to be prejudiced and false, was conclusive against the present proceeding.

The court adjourned until morning, when Mr. Thomson on the question of insurable interests on advances cited *McLauchlin on shipping*, ed. of 1876, p. 485. *Hicks vs. Shee* 7 E. & B. p. 633. 1 *Kay on shipmasters*, 127, on the duties of shipmasters and the documents he should keep on board, the bill of lading and invoice being among the documents mentioned, also an official log.

Mr. Kerr continued. He said the learned counsel was in trouble; he saw his case was gone, and he was now going on the case of the Western Insurance Co. against Mr. Palmer. But what had his client to do with that? Suppose Mr. Palmer was insured for too much, or was insured for something he was not entitled to insure for, that did not affect the present case. He challenged the opposing counsel to produce an authority to controvert his position as to the witnesses not being worthy of belief, which was supported by *Rex vs. Teal*, 11 East., these witnesses having before sworn to statements different from what they now made. He cited also 1 *Arnold on In.* 304, ed. of 1866, in regard to the amount that a man might insure, citing 15 *Mass. Rep.* 304. In this case the freight had been valued

at a sum three times as large as it subsequently turned out to be, yet the loss was paid. And yet they were told as part of the case of the prosecution that Mr. Palmer was over insured, which he denied. He read that part of Thomas' evidence in which he states that Tower told him that old Mr. Palmer had written to him to sink the vessel, and asked was it possible they could believe that Mr. Palmer would be such a fool as to write such a letter to Tower, exposing himself to a criminal prosecution, and to be turned off the bench? Tower, in his evidence, states that he had no knowledge of the insurance except what he derived from the *Maritime Register*. He read the entry from this paper that the vessel and cargo were insured. This paper was published on May 21st, fifteen days after this vessel was lost, and this was the first intimation the prisoner had of the insurances. The testimony of the prosecution stank with corruption and misrepresentation, and he felt satisfied the jury would not credit it. Mr. McLaughlin, Mr. Chas. Palmer, and Judge Palmer, all testified in the most positive manner that they never made any communication to Captain Tower with regard to insurance. Why was their evidence on this point not to be taken and believed? What then has Tower to do with Judge Palmer's insurance, even if he had put on ten times as much insurance as it was worth? Why should his client's case be affected by it? Against the statement on oath of these three respectable men, and the statement, also on oath, of Captain Tower, that he had no knowledge of the insurance, they had nothing to produce except the evidence of this horrid wretch, Thomas, who, as he had shown by authorities already cited, was not to be believed. Mr. Kerr then proceeded to read the following statement, prepared by Judge Palmer :

From the evidence of the amount of the insurance on the vessel : Insurance from Cardiff to Cienfuegos—£2,500 or

With Belyea & Co.,.....	\$12,000
“ D. J. McLaughlin, Jr.,.....	3,000
“ C. A. Palmer,.....	2,000

\$17,000

Vessel valued at.....	£4,500—\$22,000
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At risk of owners,.....	\$ 5,000
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Deduct \$2,000 insured on freight with Jarvis to cover advances,.....	2,000
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Uninsured. . . . .	\$ 3,000
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Insurance on voyage from Cienfuegos to Cardenas :—

D. J. McLaughlin, Jr. ....	\$ 3,000
A. L. Palmer.....	3,000
C. A. Palmer.....	2,000

At risk.....	\$ 8,000
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Vessel valued at.....	22,000
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At risk of owners.....	\$14,000
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Insurance from Cardenas to New York on vessel, with amount known at the time of the loss :—

D. J. McLaughlin, Jr.,.....	\$ 3,000
Advised in England by letter, April 5th, 1879, but not aware if effected at time of loss.....	£2,500— 12,000

\$15,000

C. A. Palmer in New York, unknown to Judge Palmer,.....	4,000
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\$19,000

English valuation of vessel.....	22,000
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At risk of owners.....	\$ 3,000
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Advances insured with Jarvis, if included \$3,000 which would make her just covered and no over-insurance. If wholly collected after deducting premiums paid, owners would receive \$19,000 or \$20,000. Besides which the freight was insured for \$5,000, but there would be a small loss to the owners if wholly collected.

Amount of premiums paid by Belyea & Co., per their account.....	£194
Other expenses in the account and interest.....	10

£204

Equal to.....	\$1,000
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Paid Jarvis in all about .....	150
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In New York about .....	250
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Amount of premiums.....	\$1,400
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Whole amount of insurance received by Judge Palmer per Belyea & Co.'s account, after deducting premiums and costs of collecting \$10,300

But of which he had paid expenses connected with the wreck, paying off men and other bills in New York.....	\$ 850	
Due him for advances.....	3,000	
	<hr/>	\$3,850
		<hr/>
		\$6,450
Advanced to D. J. McLaughlin, Jr. ....		1,200
		<hr/>
		\$5,250

which is the whole amount received by Judge Palmer for the loss after paying money paid out. Mr. Kerr continued that he hoped for a verdict of acquittal, and no split of the jury, as the prosecution hoped for. He desired to impress the jury well with the character of the prosecution, and the manner in which they had treated Judge Palmer, for the purpose of avoiding the payment of the insurances which they should have paid to him. Look at the improbability of the theory that Captain Tower cast away this vessel purposely. Why should he risk his life at that inclement season of the year to accomplish such a base purpose? He read Tower's evidence before the Naval Court giving his reasons why, when he found the vessel was leaking, he found that he was unable to get into Matanzas or Havana. The reasons he gave were sound ones, and it was equally true that it was impossible to keep the vessel before the wind, and that if they had done so it would have driven her on the Florida shore. He also read and commented on the evidence of Tracey C. Roberts, given before the Naval Court. This was the man who had disgracefully and dishonorably kept back the log-book which belonged to the vessel, and was the property of the owners. This man swore that the log-book was in his trunk, and was lost by the upsetting of the boat as they were attempting to land on the Florida shore. This statement was false, but his account of the circumstance of the vessel sinking and the abandonment of the vessel, corroborated that of the captain, and seemed to be a natural and true one. It showed very clearly that the abandonment of the vessel was necessary, and that she could not have been carried into Jacksonville or Brunswick. This man, Roberts, testified that he was down below hunting for the leak, but could hear nothing, a clear proof that the story told by Thomas about holes being bored in the vessel was wholly false. Roberts also testifies that the vessel went down shortly after they left her. No amount of energy would have saved the vessel; they were then 300 miles from Cardenas, and 50 miles more from Havana, and 57 miles from the Florida shore, and if she had gone ashore there she would have gone to pieces. This man (Hall) admits he has perjured himself, and it is a serious reflection on Mr. Cleveland that he should bring forward such evidence against Captain Tower. Hall is paid \$35 a month and his board, and brought here in order to convict Tower. He felt that some steps ought to be taken for the public safety, and such witnesses as Hall prosecuted for perjury. He looked upon them as objects of extreme danger. No man's reputation is safe from their false charges. Hall is the man who swore he did not care whether his parents were alive or dead—the sort of man they bring forward to testify against Captain Tower. Roberts alleges that in New York the captain said to him that they must make out as heavy weather as possible. Was he on such terms with the captain that the latter would likely make such a statement to him? It is incredible that he would do so. He asked the jury to look at the perjured testimony of Thomas; of Roberts, a notorious perjurer, who acknowledged himself to be a perjurer; of Hall, which was manifestly false; and that of Trisinski. He asked how it is that the counsel for the prosecution come forward with such evidence as this, on which to attempt to found a conviction; the evidence of men who are hired and paid to give this perjured testimony, a proceeding wholly unknown to criminal law, and to cases in which the Crown is a party. They were not to try the case of Judge Palmer in this proceeding, but the case of the accused, Captain Tower, and must not permit their minds to be swayed by extrinsic matter. They must see that the indictment was supported by credible testimony. Mr. Kerr, continuing his argument, proceeded to read from Russell on Crimes, the punishment of perjury and the subornation of perjury. He dwelt on the enormity of the crime, and said that these, in this case, there was not only perjury but subornation of perjury. Was it possible that, after the proceedings of the Naval Court—after the testimony which was taken and the judgment given—the case



could be opened up again on testimony entirely different from what had been previously given? He read the finding of the Naval Court, which he conceived placed too severe a censure on the captain, and commented on it. He dwelt particularly on the phrase that, after there was 6 feet of water in the hold and the pumps broken, no further effort was made to keep her afloat. What further effort, he asked, could be made to save her? Could they unload the vessel and bail her out? They found the master wanting in energy and determination in not using more strenuous means to reduce the leak than by a single pump. But what other means could he use? They say he abandoned her too soon, but he had produced the testimony of men of experience to show that the captain acted prudently and rightly and was not bound to go down with his vessel. At 8 p. m. Tuesday, the finding says, she should have been headed for the shore; but that was the Florida shore, which she could not have reached within six miles by reason of the shoals and reefs. Yet this finding suggests that the vessel could have been saved by putting her on a shore which, if she had touched, she would have gone to pieces. The finding also suggests that she might have got into Brunswick, but that was impossible, or Jacksonville, but that harbor had only 8 ft. of water; or at the worst, said the Naval Court, that she might have been beached and property saved. But where was she to be beached; on what part of the Florida coast could she have been beached so that property could be saved? And on such reasons as these the captain was adjudged to have been guilty of censure and he was publicly reprimanded. This sentence was grossly unjust and was not in any way supported by the evidence. He regretted that Mr. Archibald had passed such a judgment. There was a noble rule in such cases that should have prevented him from delivering an unjust judgment. The proceedings before this court were, however, a clear answer to the present case, and even if this was not so these men, having given their testimony before the Naval Court, when they come forward now and give different evidence and admit that they have perjured themselves before, are not to be believed and their evidence is worthless. He referred to Mr. Samuel Schofield's testimony. It was easy to see which side his sympathies were on. Then there was Mr. Daniel W. Clark, who seemed to come forward with a sort of spite, he seemed to want to give Judge Palmer a dig, and he kept back the selling of the vessel when she was a mere wreck. Mr. Clark did not present the whole truth in the business, but a partial statement. In contradistinction to his statement was that of Mr. Randall Morris, who testified to the qualities of the Brothers' Pride, and that he had carried a cargo in that vessel larger than that which was lost in her. Among the witnesses for the defence Silas Smith gave an excellent and reasonable testimony, and gave some insight into the real character of Thomas. They had shown that the statement which Thomas had given of boring the holes in the vessel was incredible and impossible. How was it possible for him to have bored one of these holes while the other was spouting water into his face? How was it if the water was running in these holes that the man at the wheel did not hear it? If the holes were bored as Thomas stated they must have been far above the vessel's load water line. Captain John Calhoun in his evidence says that it was impossible for the vessel to be safely run into any place. Captain Samuel Tufts, an experienced shipmaster, was subpoenaed on both sides and the other side were afraid to accept his testimony. He referred to the testimony of other witnesses, and asked what had been left undone that might have been done to save the vessel and freight? The mate says himself that the vessel was stowed all she could hold, and this statement overthrows the statement of Thomas that there was a space left in the stern. Because Thomas saved his trunk, it does not confirm the statement that the vessel was scuttled or bored. It was proved by the witnesses for the prosecution that the accused, Captain Tower, knew nothing about the contents of the casks, and it was manifest he had no right to know. Then it is said Tower has not gone to sea since May, 1879. It is difficult now to get a ship, and if he had spent a few thousand dollars on his property this did not instance that he was a felon at all. Every man has a right to get as comfortable a home as he can. Mr. Joseph C. Hughes described the manner in which the statements made in the protest were made out. Mr. Hughes had taken great care and pains in making out this statement, swearing and questioning each man separately. He also threw much light on the practice in insurance cases in reference to valuation and premiums. Mr. George Simpson was an excellent witness who was very badly used. When a man came forward



to give evidence he did not believe that every little remote fact that had occurred during his life should be inquired into. He believed public justice had been and would be defeated by this practice. James C. Johnston contradicts Thomas as to what he said. Gilbert Murdoch's evidence was very important. Two cases as to air-streaks are presented. First that the air-streak was above the load line. But assuming the air-streak to be the load line then Mr. Murdoch's evidence is a clincher. The prosecution have not attempted to upset his calculations. Then there is another witness, Captain Vaughan who, after showing that he is intimate with the West India ports and the Gulf, said in Tower's place and under the same circumstances, he could not have acted otherwise, there was no place he could have taken his vessel into. Mr. Chas. A. Palmer gave a fair and clear statement of the transactions of the vessel and the way in which the insurance was conducted; gave an admirable testimony, explained the expenditures at Liverpool, the costs and charges and what they consisted of. These insurance companies have agents everywhere, they have their inspectors and they know the value of a vessel. The value of this vessel was put down at £4,500 sterling or \$22,000. Who has been deceived by that valuation? No one. All the insurances in England were based upon this agreed value. If this was so, and they were receiving their premiums upon it, how can they come in afterwards and complain of over insurance? In the United States the agreed value on the policies on this vessel was \$16,000; the agreed values in England are always higher than in the United States. Mr. Kerr here referred to Mr. Thomson's citation from Kay on shipmasters relative to it being the duty of the captain to have the invoice with him, and contended that this was not the practice in this country or among Canadian shipmasters, and that this position in Kay was not supported by any authority. The invoices came to the merchants and the captain had nothing to do with them. He referred to the imperfect character of the log kept by the mate Roberts, and cited from Kay the requirements necessary for the keeping of a log book. The official log book of this vessel was lost, the log in court being the mate's log book. The offences spoken of by Jerry Spline for which the witness Trisinski was for seven days confined, not doing his duty on watch, would be noted in the official log book and not in the mate's log book. He was free to admit that it was the master's duty to be careful of the interests of the insurers; he was the agent of all parties and he was bound to guard their interests. But Capt. Tower did not deviate from the duty reposed in him in any degree. If the whole Western Insurance Company and Mr. Cleveland to boot had been on board the Brothers' Pride on this Tuesday evening, when the vessel began to leak, what could they have done more than the captain did to save the ship and crew? He would like to ask Mr. Consul General Archibald, who censured Captain Tower so freely, what more he could have done had he been captain of the vessel than was done? Clark vs. Bunnell, 12 Howard, in Kay on shipping 991 and 992, was cited to show that the captain and crew were not bound to run extraordinary risk of loss of life when a vessel was helpless. The crew of a damaged ship are not bound to submit to be drowned, citing the case of the Lotus Holt, N. P. 491. The mere fact that a captain did not adopt the best and wisest measures will not prevent them from recovering. In this instance, however, Capt. Tower did what all the best ship masters in the port say he ought to have done. He also cited Kay on shipping, 1,004, showing that the safety of the lives of the people on board the vessel was the primary object. He went on to refer to Judge Palmer's evidence, who spoke of Captain Tower in the highest terms, as a saving and efficient master of a ship. This prosecution was really against Judge Palmer, and was an attack on a man who could not defend himself. If this was the mode of dealing which the Western Insurance Co. practiced he trusted that all honest men would withdraw their business from them. Judge Palmer was forced to come into court and testify to contradict the infamous falsehoods of Thomas, who stated that Captain Tower had told him that old Mr. Palmer had written him to sink her. This evidence was put into the mouth of Thomas by some cunning rascal, and some vile and wicked suborner, who ought to be in the Penitentiary now; who had done it, since the examination in the Police Court. He did not venture to say or think who was the guilty suborner. And this evidence was made to fit the ruling of the learned Judge that he would not receive the evidence of Mr. Jarvis as to policies of insurance, unless it was shown that the captain knew of the insurances. Then came forward Thomas, their great card, to prove that he had a conversation with



Tower about insurance, and that he (Tower) told him that old Mr. Palmer had written him to sink her. This was the way that the evidence was manufactured to fit the case and to destroy Captain Tower. What were the jury to think of this method of bolstering up a case? He then referred to the statement of Judge Palmer founded on the evidence, which he had already read. He pointed out that ordinary disbursements and advances to make a vessel worth one-third more than she was worth before, were totally different things. Therefore the case of Hicks vs. Shield, 7 E. & B. 633, cited by the other side, had no application to the present case, except, possibly, in Judge Palmer's favor. It had no relation whatever to such a case as that of Palmer's insurance for advances to put the ship in working order and to make her more valuable. Judge Palmer said he laid out over \$12,500 on that vessel to make her a complete ship, to make her fit for any trade, and had he not a right to insure the advances? If there was no evidence of the expenses of the crew being sent home it was competent for the jury themselves to put a value on it. [The learned Judge here referred to his notes and said that Judge Palmer had put down the expenses of the crew in being brought home at \$850.] He brought out this to show that Judge Palmer was not insured to the full value of his vessel, and how then dare the Western Insurance Company come forward and make such a defence as they had done? Their defence was dishonest and unworthy and was the defence of mere schemers.

He again reminded the jury that they had nothing to do with Judge Palmer's insurances. The insurances, however, were based upon an agreed value. He held in his hand an official log book, and called attention to the difference between such a log book and the log book kept by the mate. The two log books are kept separate and distinct books and have no resemblance at all. He read Judge Palmer's letter of the 5th April to Capt. Tower at Cienfuegos, in which he told him after he reached New York to look for a deal freight. It was shown by the testimony of the owners of the vessel that they had never informed Captain Tower of the insurance on the vessel. The prosecution do not answer the evidence given about the air-streak. They do not attempt to answer Mr. Murdoch's calculations, which showed that 10,152 feet of water would enter into these holes in 24 hours or nearly 300 tons, a weight more than sufficient to sink the ship, filled as she was with cargo. All the witnesses upon which the prosecution relied were paid witnesses, and they were witnesses paid to falsify their own previous testimony. There was another offence, that was bribery of a witness. Mr. Cleveland acknowledged that he paid Roberts, Thomas, Hall and Trisinski a certain sum per month and their board. What did he pay this money for? The jury could draw their own inferences as to what the money was paid for. He cited 1 Russel on crimes p. 222 to show what bribery was and the penalties for it. An election was set aside for bribery, and why not the same principle apply to a Court of Justice where an improper verdict was obtained by corrupt testimony. He put this case in this way simply on the evidence of Mr. Cleveland, and he put it to each of the jurymen fairly, if it was his case, with his mouth closed, and about to be attacked by bribed and corrupt witnesses, what they would think of such a proceeding. He also cited Roscoe, p. 321 with reference to bribery. If people were to be punished for bribery in elections what should be the punishment of those who corrupted the very fountain of justice. He appealed to the extraordinary character of the information and the testimony of Thomas. He had never seen anything like this information; for while the law requires that the information should be made by a credible, honest man, this information of Roberts and Thomas is made by men who have before testified to the direct contrary of their present statements and who have acknowledged they were under pay. Roberts in the information undertakes to describe what melado is, although he afterwards had to admit that he never saw it. Thomas in his information admits that he committed felony. What ground had Mr. Cleveland for making such information as to his belief that the vessel was scuttled. He had no evidence except that before the Naval Court, and there was no testimony to support such a charge except that which he himself had corrupted. Thomas, the very man who put himself in jail, is now in jail under pay. Is he to remain in jail forever? He has not yet been arraigned, and is not the whip being held over his head? Is he not being told, "you give good evidence to convict Tower and we'll get you clear." He asked how the prosecution dared use the Queen's name in such a corrupt proceeding. He asked the



leading counsel where he could find any precedent to warrant him in bringing forward such a corrupt process? He contended that this indictment was not proved at all. With the exception of this wretch's testimony, which is unworthy of belief and not to be received, there is no proof to sustain the charge that the vessel was cast away feloniously, but direct evidence to the contrary. They have got to make out the intent charged, and having failed to do this, their whole case goes entirely overboard. To sustain the indictment Tower would have to be identified with the boring of those holes which it is charged sank the ship. But this has not been done. This case, therefore, has failed entirely. The only evidence against Tower is Thomas' unsupported testimony, contradicted by himself and by every rational mind, and wholly disproved. He asked for an acquittal on the ground that these people had been bribed, and also on the ground that the proceedings before the Naval Court were conclusive and a bar to the present proceedings. The proceedings before the Naval Court were not preliminary, but final. The Naval Court had the power to censure and therefore the power to protect and save. He closed by heartily thanking the jury for the attention they had given to the case. He thanked Heaven that his strength had carried him through this most laborious and important case. Lord Mansfield had said that human justice must be drawn from pure fountains. You must have an uncorrupted judge, an uncorrupted jury and uncorrupted witnesses. Without these justice was a sham and a farce. The law prefers that 99 guilty men should escape rather than one innocent man should suffer. If there be a doubt in the evidence it shall go in the prisoner's favor. The law provides that the evidence of an accomplice shall not be taken unless corroborated, and that the testimony of corrupted witnesses shall go for nothing. Applying these principles to this case, and also the principle that a man should not be tried twice for the same offence, the prisoner was entitled to a verdict of acquittal. Where was the credible, pure and unadulterated testimony against this man? No, the evidence against him was incredible, impure, and bad. It was the evidence of men who had falsified themselves for pay and for bribes, and it would be a disgrace to any British tribunal to hazard any man's life and liberty on such testimony. He left the case with them with the utmost confidence, not only of a verdict, but a quick one—a full verdict of acquittal.

MR. THOMSON then commenced his address to the jury, and said that a more extraordinary speech than that of Mr. Kerr's he had never heard. It was made up of a mass of ignorance and blasphemy, and charges of perjury launched at the heads of innocent witnesses. They had the highest authority for saying that they could not have blessings and curses from the same mouth. Why did he not use charity and say that he could not enter into the secrets of these men's minds and discover the reasons for their testimony. He has in this case thought proper to pour out a heap of abuse against Mr. Cleveland. Would they believe that a man like Mr. Cleveland would perjure himself or induce others to perjure themselves? As to the charge of bribery by Mr. Cleveland, he found these men out of the jurisdiction of this court, and found that he was not able to get them here unless they were paid for their time. They had seen Cleveland's letters to the witnesses; was there one word in them that was not proper to be written to a witness? He only asked the witnesses to tell the truth. Mr. Kerr has said it was an improper mode of proceeding to bring witnesses into court and pay them. If he meant that they were bribed, it was false, as false as hell! He said that in England in every case the practice was that the party privately injured was the real prosecutor. Take the Tichborne case; in that case the Government took hold of the matter and brought witnesses from all parts of the world and paid them, and it cost the Government nearly a million. What has been done here by these insurance companies is done in England when the Government takes hold of the matter, only in that case the Government pays for the prosecution. The expenses of this case came out of the insurance companies, and even if they succeeded it would cost them \$10,000 or more, which was all that they had at risk with Mr. Palmer. Therefore it was absurd to say that they had brought this prosecution to defend the action against them by Judge Palmer. The companies were determined to carry this matter to the very end, so that if Tower was not convicted, owing to a disagreement of the jury, he would be tried again and again until a verdict was obtained, and the city of St. John vindicated or disgraced. Mr. Kerr charges the prosecution with drilling the witnesses; such a charge as that is as false and as bad as the



heart that made it. The statement that Thomas had been drilled to make this statement about the insurance and Tower's knowledge of them after the Judge had excluded evidence of the insurance policies, could not have been correct, for in the meantime Mr. Cleveland was not allowed to see the witness, Thomas. As to the remark that evidence had been given in this court which had not been given in the Police Court, there was nothing remarkable in that, for the witnesses had not been cross-examined at all. It was said that Mr. Palmer was on trial in this suit, and that we were anxious to get a blow at him. No man could be treated more fairly than Judge Palmer had been treated by the prosecution. He thought he could show that the evidence of Judge Palmer was, to say the least, unsatisfactory. How does Judge Palmer contradict Thomas? whether Tower told a lie—that is behind the question. In fact it is so that the vessel was insured for three times its value. Judge Palmer has not trusted Mr. Kerr to put the case before the jury; he has found it necessary to make a statement of insurances on paper. It is alleged the vessel was scuttled and burned; both these facts have been proved. There was little in the evidence he could conscientiously point out as given in favor of the defence. It is as much the duty of the Crown to prove the accused innocent as guilty. The evidence of Mr. Schofield and Mr. Stewart have valued such a vessel as the Brothers' Pride at \$5,000, and Mr. Lockhart has, in placing the value at the highest price, not advanced on that amount. He referred to Mr. Vaughan's evidence which he did not dispute. Judge Palmer says he did not know the insurance was on the vessel when she left Cardiff. But he has hardly placed the matter of insurances in as candid a manner as required. There is the positive evidence of C. A. Palmer that there was no insurance on the vessel when she went ashore at Liverpool. Judge Palmer said there was an agreement between him and the Oultons' creditors at the time of the purchase of the fleet of ships to keep them insured. Mr. Thomson did not think this, however, at least as legal counsel he had considerable to do with the Oulton estate and never knew anything of such an agreement. He would not have Tower convicted if he was not guilty, but if guilty he should not be allowed to sail out of this port unfettered. Men never commit high crimes of this kind without a motive. Judge Palmer says he could not have known about the insurances. He is not apparently candid, and Mr. Thomson proceeded to show that Judge Palmer did know about the insurances. Judge Palmer is a man of extraordinary ability, which would have gained for him a higher position in this country had his ability been well directed. Had Judge Palmer wanted the correspondence between Belyea & Co., he had ample time to get it, and when his reputation was attacked, why did he not immediately write out to Belyea & Co. and produce all correspondence? Mr. Thomson then referred to the missing letter of Nov. 15, 1879, and claimed it had not been looked for; at least no special effort been made to find it. He then referred to the accounts of Belyea & Co. In one account mention had been made of a cablegram that Judge Palmer, when asked, had failed to produce. On the 5th of January, 1879, the vessel at Cardiff was ready for sea. Could not Capt. Tower have been informed of the insurance then? He would like to have seen the letter of Nov., 1879, ordering insurance. It was a significant fact that the insurances were effected in such small amounts. If she had been lost the owners knew that it would cost more than the risk to dispute the amount if any fraud were exploded. That letter is not here. The slightest hint from Belyea & Co. to the captain about insurances would be sufficient. She was insured for £2,900, and her valuation he had proved was not over \$5,000, therefore she was insured for three times her value. Unless a man intends to insure up to a full value he must pay premiums on a high valuation. Taking up the account of Belyea & Co. against Mr. Palmer, he read the item of £1.7s. for cablegrams across the Atlantic, and the item 12s. 9d. for telegrams, and pointed out that the latter item was not for *cablegrams* but for *telegrams*. He asked why were telegrams sent in England between Belyea and another person, unless it were between the captain and Belyea about the insurance? It could not be from Tower to Belyea ordering insurance, as the policies in evidence showed that the insurance was effected before the date on which these telegrams were charged. It was not necessary for Mr. Palmer to instruct the captain to scuttle this vessel; the owner need do no more than hint what he wants, and what better hint than that the vessel is insured for thrice her value, if the captain is an unscrupulous person? There was another significant fact, he said, in this connexion, and that



was the date of these telegrams. They are charged the very day before Tower sailed from Cardiff. On this point he had proof, though he could not get into the hearts of witnesses, that the accused was informed of the insurances. But Judge Palmer's version of this is, he might say, a little uncandid. Why did not Judge Palmer send out to Belyea & Co. for the letter of the 15th Nov., 1879? He then proceeded to consider directly the charge against Tower. Thomas says he was exceedingly intimate with Capt. Tower and the mate, Roberts, corroborates this. He claimed that Thomas had been promoted with unusual rapidity, from the time he joined the vessel at Philadelphia. Thomas had not, it appeared, committed the crime for money, and it was plain he was a pliable young man. In the 8 or 9 months Thomas was on board the vessel Tower had good chance to find out how much of a tool he could make of the young man. Thomas says the captain told him the crew would be all right. There existed a good coast guard. It was apparent Thomas did not know this as he had not been to Cuba before, and it was a fact that the coast guards existed at this time. He referred to Tower's journey from Cienfuegos to Cardenas by rail, and said that it was not improbable that with Washington & Co. he had an opportunity of making a corrupt bargain about the cargo, but Mr. Kerr had supplied the missing link in the course of his long defence, by showing that in January, 1878, Tower was at Cardenas with the Brothers' Pride. Tower was there a whole month and had time to make the acquaintance of every low character in Cardenas, Yannes included, and Washington & Co., Reyes & Co., and others. The Cuban, Yannes, who had, he said, intercepted a witness in coming from Cuba, threatened to cut the heart out of one Spanish stevedore who was sought as a witness for the prosecution. It was remarkable that none of these men were at the trial, though Washington & Co. are charged with supplying a fraudulent cargo.

What took Captain Tower to Cardenas by rail? At that time of the year he could get as good a freight from Cienfuegos as from Cardenas. Why did he go there? But Mr. Chas. Palmer supposed all that time the cargo was coming from Cienfuegos, and his New York agent wrote in reply to his letter of March 20, we have insured her from the south side of Cuba, that is the Cienfuegos side. But immediately after this, on the 29th. Nevius replies to C. A. Palmer's of the 26th, that the freight is insured from a port in Cuba and that is unnecessary to make a change. How did Charles Palmer know she was going to Cardenas? If Tower sent word it would be to Judge Palmer, not to Charles Palmer. If he wrote them why did they keep back his letter? Nor did we get from Charles Palmer on the stand a word about how he got this information. The Palmers went on the stand voluntarily; and don't you suppose Judge Palmer ordered Mr. Kerr to call him? The fact was these Palmers were mixed up in the case from beginning to end; and if they were implicated, he could understand why they would extend a shielding and helping hand to Captain Tower. He did not think every time a ship captain was charged that it was the owner's duty to defend him. It is no part of his (Mr. Thomson's) duty for Tower to be convicted if he is innocent. At the time the vessel was nearly run ashore before reaching Cardenas, it is probable the captain was weighing the destruction of her in his mind, he, perhaps having previously made arrangements with Washington & Co. or Reyes & Co. about the cargo, and Judge Palmer puts it strongly that if she was lost then, he would have had no insurance. This, he held, was not very ingenuous; and we have Mr. Palmer's letter of the 5th to Belyea to have the deviation to Cardenas put in the insurance policy; so, in fact, there was insurance. Who doubted that Palmer did not telegraph to Belyea to get permission in the policy to touch at Cardenas; but even if he had mailed a letter it would have been in time. He felt bound in fairness to Captain Tower to say that in his mind there was not much importance to be attached to his nearly running the vessel on a reef then. Roused out of his sleep the captain in his excitement and bewilderment might well have said, "I wish she had gone on the reef;" and he might have said it out of remorse after his corrupt bargain with Reyes or Washington & Co., about the cargo. Judge Palmer need not know that; for that may be a private little venture of the captain's. Lying in Cardenas harbor, it was shown that the captain took Thomas ashore with him repeatedly. He bought an auger while there, and takes it aboard. But then comes a most remarkable circumstance to which great weight ought to be attached. He, Thomas, took his trunk and put it aboard the "T. C. Jones" to send to New



York. It was safely carried to New York, and from there Thomas brought it down to Tower's house, opened it, and gave Mrs. Tower a cruet stand. Hall corroborated the story that the captain sold an overcoat and a trunk to the steward and pocketed the money, another fact worth looking at, Tower evidently wanting to raise as much cash as possible, knowing if the vessel went down he would lose the wearing apparel. This was a good dodge for the captain, but unfavorable to the purchasers. Captain Simpson said that no prudent shipmaster would go to sea without knowing the weight of his cargo, and it was not probable that Tower would have gone to sea without knowing what he was carrying. He dwelt on the reason there was to believe that Captain Tower had enquired what his cargo was, and that he must have known that those 863 casks were a heavy weight as they were about 1,900 or 1,950 lbs. each, and for this the captain had signed a bill of lading and a charter party. Mr. Kerr had a peculiar way of treating this case, and it would be impossible for him (Thomson) to show by authorities that Mr. Kerr's points were all absurd because the writers did not deal with fictitious or improbable and impossible cases. Mr. Kerr had first called the Naval Court judgment a bar to all future proceedings, and in the next breath said it was not worth the paper it was written on. Mr. Kerr said the captain did not sign the charter party, but it was unfortunate that when on the stand, Mr. Charles Palmer refused to give a true copy or original of the charter party, and had denied that the weights and number of casks were in it. It was on a piece with this whole transaction; when it suited the Palmers to bring in papers they did so; when it suited them to withhold papers they did so; when it was expedient to commit papers to the flames they did so. He believed Mr. Charles Palmer had that charter party in his possession, and has it now. The captain had the charter party, and in the log book are the entries of the number of casks coming aboard day by day. When the captain signs the bill of lading, "weight and contents unknown," he is only bound to account for the number of packages, and he is held by it. In time past it was held as against the ship owners till it was decided that the ship was only bound for the number of casks put on board—a case decided some 20 years ago. Now let us see what we find Tower did. That cargo was not loaded till the 3rd, Saturday. Mr. Kerr called attention to the date of the bill of lading, and I thought he was treading on dangerous ground. He read from the log book that the vessel went over the bar on May 2nd to finish loading. If the log was a worthless document it was Capt. Tower who was accountable. Was it not the duty of the captain to see the log was properly kept? When he reflected on his mate about this log such a reflection recoils on himself tenfold.

Mr. Kerr—This log book is worth nothing.

Mr. Thomson—I have heard the old adage, "Save me from my friends," and I think it lies with Tower to cry out "save me from Mr. Kerr!" Does it lie in Captain Tower's mouth to say this is a worthless document; then he is a worthless captain, for every time he omitted to record an occurrence on board he is liable to a penalty of £5, and more than that to a penalty of £10 for not sending it up to the harbor master of the port when the vessel was lost! He may well say save me from my friends! Continuing, Mr. Thomson read from the log book the particulars of the finish of the loading. These entries, said Mr. Palmer, are the work of the captain, and it shows on the 3rd the vessel took aboard 67 casks, the last of her cargo; yet on the day before Captain Tower signs a bill of lading that he had received 863 casks and gives the marks, though it was false as it could be, 67 casks at least not getting on board till next day. For a valuable cargo that would be reprehensible; but if the consignees were never to see it, it made no difference when he signed it. If she was bound for the Bahama Banks, as some of the stevedores laughingly said, no wonder careful Captain Tower didn't show his usual caution in signing it. It had been admitted that when she carried out 517 tons of coal she was down 14 feet in water; but when she left Cardenas there was melado enough to sink her 15 feet 8 inches. Now if she drew that she could not get over the bar, as it is shown that the depth of water on the bar is only 14 feet. Even this would have aroused Captain Tower's suspicions, had the cargo been of genuine melado. But she did float over, though only 47 casks were put on outside of the bar. There were, according to invoice, 863 casks of 1,394,263 lbs., or 622½ tons; in any way the thing is calculated it would weigh from 1,900 to 1,950 lbs. per cask. In any point of view they would weigh 200 tons more than the coal, at least 100 tons, so



they could not get over the bar. Thomas tells us that after being out a day the captain says, go down and put a hole in her. Returning to the log book, Mr. Thomson said Roberts withheld the existence of the log book till it came out on this trial and then the Crown telegraphed for it. They did not know what it contained, but they wanted the truth. He read how the weather was at the start, as given in the log, to show that there was no storm then. Turning back to the entries from Cardiff, he said that in the roughest weather, when to an inexperienced man it would seem difficult to write, the entries were well and carefully kept. Returning to the log from Cardenas he pointed to the fact that from the time the water began to gain on the pumps no entries were made—the scuttling had begun to do its work. He further examined the log to show that there were no omissions, as claimed by Mr. Kerr. On Monday, says Thomas, “I went down, by order of the captain, and bored the hole.” It had been charged to the discredit of Thomas that he said it was a foot and a half between the timbers. He would read from His Honor’s notes and from the notes of the short-hand reporter, to show that Thomas had never said anything of the kind. (Mr. J. Kerr objected to reading the short-hand reporter’s notes.—His Honor would admit it unless it differed materially from his own notes.) Mr. Thomson here explained, by a diagram, to the jury what the air-streak was, etc., to show that Thomas meant only a span of  $1\frac{1}{2}$  feet between the chocks—not between the timbers. That he meant this was evident, the counsel contended, from his further statement that there was not room to bore them together, and that he said there was a streak of air-streaks, that is, with blocks between every  $1\frac{1}{2}$  feet or more. To the question, why did you not bore them right along, Thomas had said there was not room between the timbers; yet he is assailed as a dangerous and improbable witness and the time of the jury wasted, while the defence were offering testimony not at all to the point. Thomas had done wrong, but he was working out a valuable repentance, endeavoring to make reparation to the best of his power. His character was under a cloud and would be for the rest of his life; but he was to be commended for now acting under the dictates of his conscience. He could understand if Tower boldly took the ground that he did not instruct Thomas, but he could not understand the line they now pursued. One of the most dangerous parts of the defence was that which they had offered as to the location of the air-streak; locating it where it could not possibly have been. He took up the evidence of Stewart, Purdy and Randall Morris, and read over their figures to the jury to show its exact location to a mathematical certainty, and arguing that it established, if the figures as to the cargo of the Brothers’ Pride were correct, that her air-streak was from 10 inches to 2 feet under water. Reviewing Thomas’ evidence, Mr. Thomson said it was absurd to suppose he could give an accurate account of the hold timbers when only working by the flickering light of a tallow candle. He bored the holes by the captain’s orders; but he had the honesty to admit that he believed the pump broke accidentally. If he was the villian Mr. Kerr calls him, he would not have hesitated to swear that Tower broke it intentionally. It was absurd to suppose he would give this piece of information were he actuated by malice, and the same would apply to his statement that the captain did not know he put his trunk on board the “T. C. Jones.” Was that the evidence of a man bribed to swear Tower to destruction? Has there been a tittle of evidence adduced that Tower went down into the hold to ascertain where the leak was? Returning to the boring, he said it was by Tower’s order the oakum was put in to stop the noise of the running water; another hole is bored Monday night, and at 12 o’clock Tuesday the pump broke. There was a light breeze then and the Naval Court say he should have turned back and made a port. Tower admitted that before the Naval Court, but Mr. Kerr meets it by trying to show that if she had 8 or 10 or 12 feet of water in her hold she would have gone down. But with four holes in her, with her hold full of water she would not sink, because these casks were not melado, but held water and plenty of air. She would not sink, so he had to burn her. It would not do to beach her, as the wreckers would find out what her cargo was. Here, said Mr. Thomson, is a very curious piece of evidence. All the men that we could get swore that she was burned. But Mr. Kerr brings on witnesses to show the captain did just right in burning her. Assuming for the sake of argument that she was set on fire as a legal right, it was the duty of the captain to have so stated in the protest. But when Mr. Kerr put in this evidence, he did so with the consent of Captain Tower! Surely they should



have taken one course or the other, and when they state it is right to fire a vessel, they admit that the captain did set fire to her. Yet the captain says not a word of the firing to Mr. Hughes or Consul Archibald ! Is this the conduct of an honest man ? Then Tower swears he does not keep an official log. Tower's own story is put in evidence and it shows that they played around the vessel for five or six hours that morning, and then sent men to sink her. No concealment there ; they bore holes, try to sink her and can't, so they set fire to her. And then they get away safely, more than Tower deserved, or for that matter Thomas either. It had been charged there was no corroborative evidence that Tower was guilty, and he would deal with that. First, there was the unusual intimacy of the captain with Thomas ; and then when he got to Titusville to make his protest he took, not the first mate, but the second mate, Thomas. When the enquiry is over in New York, he takes Thomas down to St. John to his own house and writes letters he could not send the money to him to Nova Scotia, saying he could not get the money from Palmer. These letters Thomas destroyed but McNeill had corroborated this, swearing he read the letters. Why would Tower write letters to the man to whom he did not owe anything. A letter of Jan. 1880, from Tower to Thomas said, (after he knew he would be arrested) "please come over to St. John at once as I want you—expenses will be nothing as you need not stay on shore." Why were these letters written unless Thomas had some secret hold on him ? Before they left the vessel at all, Thomas says Tower went down and broke the bulkhead through the lazarette and got at the hold in that way, to escape the eyes of the man at the wheel. Two men saw them together in this water closet. This was corroborative testimony. They had no business there together except for some improper purpose and that was breaking through the bulkhead. Trisinski corroborated the sound of boring and he says the whole thing came back to him as a flash, also the words he had heard from stevedores as to where the vessel was going. This witness had been put in irons and it is corroborative of his story that he tore a leaf out of the log book at Cape Carnaveral, to conceal the record of his punishment, but it was to be noted that he had left the page containing a memorandum of his release, which he would doubtless have torn out had he seen it. Passing on, Mr. Thomson described the manner of making protests generally, and remarked that in the case before Notary Hughes the captain would pay no wages till the men had signed the protest. The counsel then read the protest, comparing its several items with the entries in the log book of corresponding dates. It was noticeable that when the storm went down the vessel began to leak more, also that the protest contained no word about the pump breaking then, and that she had 12 feet of water in her hold at 5 a. m., with 740 tons of cargo in a 400 ton vessel. He argued that Tower left out the breaking of the pump then, so as to deceive the Naval Court, changing it till 6 p. m. Tower was the man who not only swore to it but concocted it. As words fell from his lips they were taken down by Mr. Hughes, yet Tower was the man who had instructed his counsel to accuse these poor sailors of perjury ; Tower, who had twice committed perjury ; before Mr. Hughes and before the Naval Court. Continuing the protest, Mr. Thomson read "she went down," and contrasted that statement with the story that she had been burned, and which, he said, an honest man would have included in his protest. From this Mr. Thomson turned to the proceedings before the Naval Court, reading Tower's evidence and commenting on it. In it Tower swore he did not recollect the weight of the cargo, an admission that he had once known it. He put the several statements therein contained against those made before Mr. Hughes, and then argued that if there was any subornation of perjury before the Notary it was Captain Tower who was guilty of it by holding back the men's pay until they had made oath to it. He pointed out that for an hour the captain stood in the outer hall and asked each man as he went in to make the weather as stormy as possible and not to allude to the fire. Who corrupted this young man Thomas and led him from the paths of rectitude ? William H. Tower. And yet it is Mr. Tower's counsel who is casting wholesale charges of perjury against the Crown witnesses. Thomas has had the grace to come forward and confess these perjuries. He contended that Thomas had been corroborated in every point as much as such testimony could be corroborated. Thomas said that Tower told him that Judge Palmer was going to build another vessel for him and Judge Palmer never denied that. He (Thomson) thought if all the insurances had been promptly paid the vessel would have been built. Mr. Thomson then went on



to refer to Tower not having gone to sea since, to his having spent a large sum, some \$2,000, on his house. Tower was getting \$60 or \$70 a month and it was not usual for a man to lay up a large sum of money on that. He not only paid off a mortgage, but repaired his house. Then a draft of May 2nd had been drawn at Cardenas in favor of Mrs. Tower for \$913.25 by Rojas & Co., the very last day Tower was on shore. What in the name of heaven had these gentlemen to do with Mrs. Mary A. Tower? It was intended that Tower would ship a bogus cargo, to go down, and these gentlemen had to pay for corrupting Tower, he could understand this transaction! At that time Tower wrote to Palmer \$300 was due him and that was all! Tower might have private means, but Cuba would be the last place for a St. John man to invest it in. He had listened for the counsel for the defence to put forward some theory to cover this; but not a suggestion had they to throw out, not even a letter from Cuba! Clearly Tower looked on this money as his own, as he took it afterwards. Was not this most damning testimony? Next in order of time comes Captain Tower himself, who attempted to negotiate a draft of \$3,700 in the Maritime Bank, on the 17th June, just three days after the \$38,000 had been paid for insurance on the cargo. The draft was signed by Louis, Roderigo & Co., drawn on Mooney & Co., of New York. On this \$500 was paid by Captain Tower when it was brought in, and the draft was returned unaccepted and he paid back the money. The fact that this draft is not produced now by Captain Tower shows that he has got the money for it. Where is that draft or where is the excuse for it being gone? What has he done to obtain this large sum? In August he goes into the Bank of New Brunswick with a \$3,000 draft drawn by Mendoza & Co., on a banker in New York and endorsed by J. M. Reyes and by Tower. This man Reyes was a member of the firm of Washington & Co., of Cardenas, the shippers of this melado. How did Reyes get his name on a draft for \$3,000 in favor of Tower. Here we have drafts to the amount of nearly \$8,000 in all paid to Captain Tower, and for what was this money paid? This draft was presented at the Bank of New Brunswick early in August and they sent it to their agents in New York and collected it, and this money was placed to the credit of Captain Tower. The balance of that money was drawn out by Mrs. Tower, finally, on the 13th March. Therefore, as the wages of his iniquity the sum of nearly \$8,000 was paid to Captain Tower. And this money comes from Cuba at the time this cargo has been shipped. What explanation had been given of this transaction? We had shown this cargo consisted of casks filled with dirty water. They have taken no step to disprove that this was the nature of the cargo. But Mr. Kerr stands on the contention that the captain was not bound to know what sort of a cargo he was carrying, as the bill of lading said "weight and contents unknown." The stevedores at Cardenas called the Brothers' Pride not by her name, but "the water barque," so notorious was the fact that this vessel was loaded with dirty water. This was the testimony of Melian who saw the cargo stowed.

He charged Mr. Kerr with gross unfairness to the witness Melian, and said since the trial opened Mr. Kerr had attacked every witness and even insulted the Judge on the bench. Mr. Cleveland fortunately knew Mr. Kerr's disposition, and paid no attention to his repeated insults. Returning to his argument, Mr. Thomson said the defence had gone to great pains to call witnesses to show that melado settled on one side of the cask and rolled unevenly, but he argued that the same effect would be produced by half filling a cask with water. In dwelling on the drafts proved to have been sent by Tower, he said that eight days after the drafts were dated at Cardenas they were in Tower's hand, and this was good evidence that had Tower wished to do so he could have got witnesses here in his behalf since the trial began. This draft was drawn by Reyes and endorsed by Yannes, "pay to Capt. Tower on account." On what account in heaven's sake was that! Why were not Reyes and Yannes put on the stand? How could the Crown give stronger evidence on this point, unless they had a witness who heard the conversation? Yannes was not a banker, but a ship broker; although it had been shown that five years ago Yannes was a dance hall keeper. How could Tower's money be in those people's hands except upon the presumption that Tower was a party in the agreement to scuttle the vessel. Trisinski had been attacked by Mr. Kerr as a perjurer; but this witness says he was not sworn to the protest, though Hughes contradicts him. Recollect, Hughes is a broker for shipowners and does Nevius & Son's business. There was a laxity of rules in taking



protests, and each man is not sworn separately. Hughes should have examined each man separately, and prepared the protest from what he gathered from all. There was no more dangerous class of testimony used in courts than affidavits, and this protest came under that head. Trisinski was just learning English and did not know the force of the English language. It was evident he did not consider he was taking an oath before Hughes, because, when asked to go before the Consul, he refused; he would not face the formality of an oath and swear to a lie, and he so told the captain. What did Trisinski mean when he said he would not swear unless the firing of the ship was included? Did he not mean he would not swear to a lie? Tell me that man had not a conscience? He says he never swore to the statement before Hughes, and though the captain laughed at him, he refused to go before the British Consul and swear to a lie. Roberts did not stand particularly well, as he swore the log book was lost, and it is obvious Roberts was saying what was untrue when he swore to the loss of the log book. Roberts had no object to this, but who induced him to suppose it? It was W. H. Tower, who himself must have seen the log lying upon the trunk on the beach at Florida. But it is for the jury to consider who corrupted him, if it was not Tower, who also corrupted Thomas. It was Tower beyond doubt, yet he pays his counsel to abuse these men. Mr. Thomson argued that Capt. Tower knew the log book was not lost, and that it was in his benefit the men swore it was lost. It was part of the fraud for Roberts and Thomas to swear as they did and conceal the felony, an offence which the captain told Thomas would lead to transportation for 14 years. The man who made the bargain to bore the vessel would make an additional bargain to swear false—lie about it. Thomas told lies before the Naval Court, and who suborned him to do it? William H. Tower, by whom the subornation was done in New York. He, to make a dupe of that young man and rob him of his character. And it came with an ill grace for his counsel to shower abuse on the young lad who he found innocent and a pliant tool in his hands and left almost a convicted felon! Reading the Naval Court evidence, Mr. Thomson asked if the jury could believe that only the light sails were furled when a heavy gale was blowing and the vessel straining greatly? He believed they would look on this as in keeping with the rest of the testimony, and like what Thomas describes the vessel as going down, or as he says, "chucked herself right down," when they were only an hour and a half off in the boats. He said this because he was instructed to do so by the man in the dock. [Mr. Kerr—we deny it.] Of course you deny it, said Mr. Thomson. It is your policy to deny it. Proceeding, the counsel said all these statements were dictated by Capt. Tower, who gave the boatswain money at New York, an act for which Capt. Tower has, by the finding of the Naval Court been reprimanded. He read Hall's testimony before the Naval Court, commenting on it and showing that he had gone further than the rest and made even Monday stormy in his effort to please the captain, and that he also swore the vessel went right down with all sails standing. Yet Hall was the very man who fired her. Mr. Thomson then took up Jerry Spline's evidence and went over it item by item, dwelling on the points wherein it was at variance with what his companions had sworn before the same court. He swore they broke the pump on Tuesday morning, and not as Tower put it, late Tuesday night after midnight. Jerry, though he wanted to do all he could for the captain, would not swear he saw her go down, but got out of it by swearing she went out of sight. It should not be forgotten that this was not Crown testimony, but evidence put in by the defence, who were therefore bound by it. Mr. Kerr had first sought to show that it was all false, and then to show that the judgment of that court should act as an estoppel to the present trial. He (Thomson) had never heard such a defence before, nor any such nonsensical contentions as those put forth by Mr. Kerr during the progress of the trial. The only man who would not lie for Tower was honest John Trisinski. The counsel then passed comment upon the finding, which was, he said, a well deserved censure upon the man in the dock. Can any other conclusion be come to than that Tower ordered the scuttling to be done? The counsel then called attention to the extraordinary lines of defence set up from time to time and successively abandoned. First Mr. Kerr had sought to show that she was a weak vessel, but he forgot if that was so it would prove she was over-insured. Mr. Palmer had sworn to the amount he had expended on the Brothers' Pride, and thus knocked to the winds Mr. Kerr's contention.



Though the evidence was clear and conclusive that she had been coppered in 1878 and examined by the captain at Cardiff and her topsails repaired and caulked, yet Mr. Kerr tried to make the jury believe the leak was occasioned by worms. Then he abandoned that and tried to make out that coal dust had worked into the seams. Next he tried to argue that the water closet pipe was stove in, because he heard it was the case with another vessel, and that it must be the inevitable tendency of water closet pipes to break on shipboard. About these worms he said nothing in his long, random speech. (Mr. Kerr.—I left that for His Honor.) Mr. Thomson—I suppose he has concluded that the worms have dropped off by this time. Lastly he tried rats, but gave that up quick because one of his own witnesses said if it was genuine melado it would kill even the rats. Charles Palmer was as excited as possible when put on the stand, and said he had indemnified the bail. If he had nothing to do with the affair why does he protect the accused? This shows more than an ordinary interest, and for innocent people places them in a very extraordinary position. The men who brought forward the statement that the air-streak was above the load line knew better. It is a mathematical certainty the air-streak was not where the defence claim it was. Mr. Kerr knew nothing about it, that was plain; at least no more than I did. [Mr. Kerr—a little more than you did.] Mr. Thomson proceeding said it was an extraordinary circumstance that Chas. Palmer had endeavored to show that the air-streak was above the water when loaded, when he knew better. He knew it better than Mr. Kerr did, and his father knew it well too; Could anything be worse than that? He looked at it as one of the worst features in the case, and men who would try to deceive the jury in this respect must have very bad or very good reasons for doing it. The counsel then took up Mr. Murdoch's evidence on hydrostatics and pointed out that he had not attempted to show how the rolling of the ship or the placing of oakum in the holes would affect his calculations. No other witness had attempted to do this, and thus fell to pieces this wonderful part of the defence. Turning to the cargo, Mr. Thomson argued that it had been shown that she had 727 tons on board, figuring melado at 1,800 tons per cask, as put by Melien, or 762 tons as based on Beste's estimate on the weight of a cask at 1,950 lbs. With this weight she could not have got over the bar, but would have gone down like a stone. Ricardo Acosta had made a statement before the Naval Court, not under oath, putting the melado at 1,600 lbs. per cask each, net, but the invoice gave a much larger weight, and Acosta knew the weight set down in the invoice. He thought Mr. Kerr a bold man to call attention to this portion of the Naval Court proceedings, and he reminded Mr. Kerr that Acosta's statement was not sworn to. He could not pass over the mode in which questions were put to some witnesses for the defence, but he would not waste time over the insults offered the Crown witnesses. He would not make any comment upon the way Mr. Kerr insulted the witnesses in the dock. The case should have been finished in 10 days if conducted by proper counsel. After pointing out that no man knew the law and practice of insurance better than Judge Palmer, he took up the statement submitted by Judge Palmer. Mr. Palmer had valued the vessel at \$22,000, the English valuation, when in fact there was only a \$16,000 valuation in the policies on this side, and he would show that this was done to deceive the Great Western. On the vessel from Cardenas to New York, there was \$19,000, or only \$3,000 at the risk of the owners. There was also \$5,000 on freight, but he would call their attention to it by and by. In the early part of January, 1879, Judge Palmer knew the vessel was amply insured; that a large portion was made in December, and that as to its insurance in January, there was a cablegram and telegram relating to it between Belyea and some one in England, presumably the captain. Mr. Palmer knew as early as March 26 that the voyage would be altered, and were not cablegrams and telegrams sent to England to get this insurance altered? It was a sufficient fact that this insurance was put on in small sums, and that Belyea employed two brokers to put on the insurance instead of one person. [Mr. Kerr—those policies were not proved.—The Court—that is correct.] Well, I put the policies in Judge Palmer's hand, and he had no opinion to pass on them. Mr. Kerr says these were blank papers, but they bore the revenue stamp and had the receipts endorsed thereon, yet Judge Palmer had the hardihood to say he had no opinion thereon. That is one of the bad features in the case. Mr. Palmer came here to make his own statement public, and he was allowed to do so

in his own way. Mr. Thomson thought Judge Palmer would be the last man to cast doubt upon these policies and to deny them. There was something wrong when he denied them. English companies do not pay money for nothing. If Judge Palmer's statement as to £400 on hull and £300 on freight is true, then have Belyea & Co. been guilty of gambling on the vessel? He did not know the standing of the firm, but in two months the evidence would get home, and Belyea and Palmer would be brought face to face with each other. He did not know how it would come out, but if Belyea & Co. were guilty they were worthy agents of such persons and competent to instruct the captain to scuttle the vessel. Judge Palmer said the insurance of £400 would end at Cienfuegos.. He regretted to have to show the jury that that statement did not bear on its face the evidence of veracity. Mr. Thomson then took Belyea's account current and pointed out to the jury the several items touching the insurance and that the rate of 6 guineas was charged on the round voyage. The freight would end at Cienfuegos, but the vessel's insurance did not. He affirmed that the ditto marks on which Judge Palmer based this statement were not part of the original account, were made in different ink and were not like the 96 other ditto marks scattered through all the accounts. (Here Mr. Thomson laid all the accounts from Belyea before the jury and asked them to compare the ditto marks in them with the one on which Judge Palmer based his statement that the vessel's insurance terminated at Cienfuegos instead of being for the round voyage.) Not only is it a single mark, but it is made in different ink, and he asked the jury, each one of them, to look at the marks with a magnifying glass. (After the jury had done so the papers were inspected by His Honor.)

Mr. Kerr asked His Honor to point out what the dots were, and held that it was new matter which had not been touched on before. He was not disposed to let untruth pass at any stage, and he wished to have the evidence read on this point if any had been given, which he denied.

His Honor found on his notes that Mr. Palmer swore that he thought this insurance stopped at Cienfuegos.

Mr. Thomson said Mr. Palmer also said he was further confirmed by those "ditto" marks, and those ditto marks, if placed there since, would confirm his statements, provided the jury believed them to be true. Mr. Thomson pointed out that the largest amount charged for the round voyage was 8 guineas, and that knowing this Palmer could not have thought the insurance stopped at Cardenas. He had shown these marks were not genuine, and the evidence was as strong as holy writ that fraud had been perpetrated by some one. He called the jury's attention to the shape of these two ditto marks as compared with all others in the account. Resuming, Mr. Thomson asked the jury to bear with him while he pointed out the insurance on her from Cardiff to Cienfuegos. He would not put the vessel at \$22,000, as Mr. Palmer had, for that was an excessive value. Belyea & Co. had gone to various insurance companies in England and effected insurance.

Mr. Kerr objected that there was no evidence in this.

His Honor said that Mr. Palmer's knowledge of the insurance appeared to be gathered from the accounts.

Mr. Thomson argued that he had put the policies in Mr. Palmer's hands and asked him relative to the insurance.

After Mr. Kerr had replied the Court said he would read Judge Palmer's evidence to the jury and instruct them what he thought was and was not proved. Resuming his speech, Mr. Thomson, after stating that he would put the value of the vessel at \$10,000 as given by Mr. Lockhart and the highest sum named by any Crown witness, read the following statement of insurances :

From Cardiff to Cienfuegos on ship :—

English, £2,900, all paid, or,.....	\$14,500
Great Western.....	5,000
	<hr/>
Value of ship.....	\$19,500
	10,000
	<hr/>
Over insurance on ship.....	\$ 9,500



On freight, English, £250, stg., or.....	\$1,250.00
Anchor and Orient.....	2,000.00
	<u>\$3,250.00</u>
Possible Freight—517 tons coal @ 10s. per ton.....	1,292.50
	<u>\$1,957.50</u>
Of this freight of \$1292.50, one-third was drawn at Cardiff, leaving risk.....	861.67
Insurance on freight.....	\$3,250.00
Actual over-insurance on freight.....	<u>\$2,388.33</u>
Ship over-insured.....	\$9,500.00
Freight over-insured.....	2,388.33
Total over-insurance on vessel and freight from Cardiff to Cienfuegos....	<u>\$11,888.33</u>
From Cienfuegos to Cardenas, on ship, English £2,900 stg., all paid, or.....	14,500.00
Great Western.....	5,000.00
Anchor and Orient.....	3,000.00
	<u>\$22,500.00</u>
Value of vessel.....	10,000.00
Over-insured.....	<u>\$12,500.00</u>
On freight, English, £300, stg., or.....	1,500.00
Great Western.....	5,000.00
Insurance Co. of North America.....	2,000.00
Total on freight.....	<u>\$ 8,500.00</u>
From Cardenas to New York, on ship, English, £2900, stg., all paid.....	\$14,500.00
Great Western.....	5000.00
Anchor and Orient.....	3,000.00
New England Mutual Insurance Co.....	2,000.00
	<u>\$24,500.00</u>
Value of vessel.....	10,000.00
Over-insured.....	<u>\$14,500.00</u>
On freight : Great Western.....	\$ 5,000.00
English £300, or.....	1,500.00
Insurance Co. North America.....	2,000.00
	<u>\$8,500.00</u>
Could have earned by safe arrival at New York.....	\$4,530.75
Over-insurance on freight.....	<u>\$3,969.25</u>
Total over-insurance on voyage when lost :—vessel.....	\$14,500.00
Freight.....	3,969.25
Total.....	<u>\$18,469.25</u>

Let us see if Judge Palmer believed there was anything wrong? He gets letters from Belyea, but leaves out an important letter, neither by draft or original, nor is the draft shown to be lost. He had called for accounts of the *Brothers' Pride* prior to Oct., 1878, to show she was a paying ship; but Palmer refused to produce them. If he came as a witness at all he should not have hesitated to produce any papers touching this serious charge, or else he should have stood on his high character in the community and scorned the slanders. But if he admits his character is such as can be affected by the breath of suspicion from the captain and the boy Thomas, he should have gone freely and fully into the entire transaction. There is no middle course to pursue. Mr. Thomson then showed that the telegrams and the letter of Jan. 9 ordering insurance from Belyea were not produced; that Belyea said there was another £100 added in January, and asked where was the letter ordering that to be done? The accounts of December 31st had not been produced, the cablegram of January 4th and telegrams of January 9th, etc., not produced, in fact of all Belyea's letters of 1878 only two were produced. The letter from Tower, of January 5th, 1879, referring to accounts, is not produced; and the cablegram from Cuba, to Palmer, was not produced; was it not extraordinary in this enquiry the most important letters were missing? He read Palmer's letter to Tower of January, answering his from Cienfuegos, and asked why that letter of

Tower's showing the original contract about freight, was not put in evidence? He believed Tower had those letters, for the vessel went down leisurly enough, in fact did not go down but was burned, and so he had time enough to save all the papers on board. He read Palmer's letter, ordering Tower to come right here in ballast and that he could get a deal freight to the West Coast of Ireland. Now, said Mr. Thomson, Mr. Palmer told us on the stand that "the vessel could have gone back to Cuba for another paying freight." Palmer writes "the voyage can be made quick to Ireland in the spring of the year." Mr. Thomson argued it would be well in the summer before she could get to St. John, and if he was disposed to be severe on Judge Palmer he might surmise the letter was an afterthought, made since the loss. He further criticized the construction of the letter as highly suspicious, and asked where was the letter that sent Palmer the freight? Did it come to Mrs. Tower? Two-thirds of it not accounted for! Not a hint that it ever reached Judge Palmer's hands! This was a circumstance the jury should weigh carefully. He read Tower's answer of the 17th to Palmer's letter of the 5th, in which he stated he was to go to Philadelphia, Baltimore or New York. How happens this to be written on April 17th, and how did the Palmers know to insure in New York! It was strange, if these were genuine letters, that Tower did not even thank Palmer for paying the money to his wife. He had shown that Tower had the charter party and shipping papers, yet they had been kept away. The most important letters happened to be missing, lost or burnt—a queer fact. Why were the letters lost aboard the vessel? Do you believe they were lost? There were lots of time, playing about her in boats for the best part of a day, to secure the letters. This is a curious fact. Another extraordinary fact was the account Mr. Palmer gave of the transaction between him and Ranney. Mr. Palmer admitted that he put a deviation clause in the application, yet he got his policy without this deviation clause. All he had to do was to say to Ranney, if the vessel was lost, you gave me insurance on the basis of my application; make good the loss. But Mr. Palmer tells Mr. Jarvis that that policy was void; yet after the vessel was lost, he gives Ranney a notice of abandonment and follow it up with a proof of the loss. Here it rested till this trial was begun, when Mr. Ranney asks him to declare the policy at an end. Mr. Palmer says this was done at Mr. Ranney's request. What interest had Mr. Ranney in it? This was a most extraordinary course for Judge Palmer to pursue. It was curious that Chas Palmer, who was only a puppit in the ownership, should make insurance without his father's knowledge; an insurance of \$5,000, yet Mr. Palmer afterwards said that he thought if the New York insurance failed, Mr. Ranney would pay! What right had he to think that Nevius & Son had not made a good and valid policy? And would he not have held Nevius responsible? This was a lame, a very lame statement for a man like Judge Palmer to make! Could such conduct as that bear the light of day on it? On the stand, Mr. Palmer told that he explained all his English insurance fairly and honorably to Mr. Ranney and Mr. Jarvis, but on the stand, Mr. Jarvis flatly contradicted it, saying Mr. Palmer told him the vessel generally ran without insurance. It was for the jury to determine as to the credibility of these two witnesses. Mr. Thomson said there was \$2,000 to come off and it left \$16,469.25 over insurance. Take off \$1,500 on freight and it left \$14,969 over insurance. There could not be the shadow of a doubt about this, calculating on the basis of the highest valuation of the value of the Brothers' Pride, that of Mr. Alex. Lockhart, made on the witness stand. It was idle to say this was not a circumstance that should weigh heavily on the jury's mind. This community depended largely upon its shipping for its prosperity and if scuttling was to be winked at, then our ship owners would find it utterly impossible to get their vessels insured at all, or at a ruinously high rate at the most. He then returned to the contradiction between Mr. Jarvis and Mr. Palmer's testimony as to their conversation, and asked which the jury would believe? Mr. Jarvis had nothing to gain or lose by the trial; while Mr. Palmer's reputation was at stake. He had Mr. Loughead's express denial that any conversation took place between him and Mr. Palmer. Mr. Chas. Palmer while on the stand volunteered the statement that he had kept nothing back from Mr. Jarvis. Mr. Thomson then went on to point out the contradictions between Mr. Jarvis and Mr. C. Palmer's statements as to what took place between them. Mr. Jarvis stated that he put a number of interrogatories to Chas. Palmer, by instruction of the solicitor of the company, the answers of which he put down as Palmer made them. Jarvis stated that C. A.



Palmer expressly told him there was no insurance. This paper was of importance, as Mr. Jarvis took down the answers then and not one word did Palmer say about insurance on the freight over \$5,000. It was a question which the jury would believe, Jarvis or Palmer? Jarvis had no object in deceiving, but C. A. Palmer had every object. He was then attempting a fraud on Mr. Jarvis by endeavoring to get the freight out of his office by a gross concealment of the truth. Yet Mr. Kerr assailed Mr. Jarvis on the stand and wanted him committed because he asked leave to produce his letter book and show Charles Palmer's answers in full. He thought Mr. Charles Palmer was fully discredited by as respectable a man as there was in the City and County of St. John. He believed there was not a man in the Court House who did not believe every word Mr. Jarvis said; and that Mr. C. A. Palmer has been guilty of uttering gross untruths. [The court looked up the notes of C. A. Palmer's cross-examination, and read: "My father did not effect insurance in England; it had to be done by some broker. What was done by a broker would not be Judge Palmer himself, &c."] Mr. Thomson resuming, said Mr. C. A. Palmer had gone to Mr. Jarvis and stated that A. L. Palmer had not effected any other insurance. He had cross-examined Mr. C. A. Palmer as to that, and Charles swore that he stated the truth in saying Judge Palmer did not effect any insurance, because it was done by his agents. Like son, like father, for when on the stand Judge Palmer said he thought this was an honest answer. When a man's mind is so demoralized as to give such an answer, little weight should be given to any of his testimony. This protest was to give the insurance companies the whole truth; yet both father and son concealed the facts. If that line of reasoning was correct, why did Charles say the insurance by his agents in New York was done by *himself*? What was right in one case did not seem right in the other, according to the Palmer standard. That vessel was valued at \$16,000 in New York, and had Mr. Palmer informed the insurance companies of New York that he had effected an insurance previously in England, it would have wiped out their insurance. He had got \$12,000 paid in England, at his own figures, so \$12,000 of that \$16,000 was already paid and the New York companies would only have to make up the balance of \$4,000. The law expressly stated that previous insurances were to be deducted, and that would put Judge Palmer out of court in New York. The Great Western Insurance Co. did not care for the conviction of Tower so far as making out the case against Palmer, because they had evidence out of Palmer's own mouth sufficient to gain their case. In summing up, Mr. Thomson said he had hoped to have finished his argument earlier and would doubtless have done so but for Mr. Kerr's repeated and unseemly interruptions. He had done his duty as a Crown Counsel, and after a careful and unbiased study of the case, had not a shadow of a doubt of Tower's guilt. He would leave the case to the jury, confident that they would return a verdict of guilty, according to the evidence. An almost indelible slur had been cast upon the honor of our community and upon the whole Dominion, by the act of the prisoner at the bar egged on by men as mad and unscrupulous as himself; a slur that bore darkly on the honor and integrity of the great mercantile community, and he asked the jury, by their verdict, to remove that stain and vindicate the honor of our country. There was a large class who asked for vindication at their hands, the seafaring men, who go down into the sea in ships and do their business upon the great waters. This class were in the hands of the jury to protect them against the acts of fellows like Tower, without the fear of God before their eyes, egged on by unscrupulous and unprincipled owners. Were such deeds permitted to pass unpunished the lives of sailors would be at the mercy of such demons. Their interests were in the hands of the jury and he was satisfied that the jury would not be unfaithful to their trust. If bad men can be found to execute and equally bad men behind them to plan such villainy and felony, at least let it be said in the same community there were to be found honest judges and honest juries who would inflict swift and condign punishment on the criminals. He expressed the conviction that the jury would give a true verdict in accordance with the facts.

### Chief Justice Allen's Charge to the Jury.

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Chief Justice Allen proceeded to deliver his charge. He congratulated the jury on the prospect of the trial being brought to a termination, and thanked them for the attention they had given it. He would endeavor to be as brief as possible, and would only read such portions of the evidence as he deemed vital. The point had been taken by Mr. Kerr that the proceedings of the Naval Court were a bar to this proceeding. He would not take that view of the matter. A man cannot be bound by a proceeding to which he is not a party, and the insurers and consignees were not represented in the Naval Court. The Naval Court was composed of the Consul General and two captains then in the port of New York. The learned Judge read from Kay on shipmasters and seamen to show what were the duties of a Naval Court, and in what cases its proceedings would be conclusive. The proceedings are only conclusive in matters in which all the parties are before it, there being matters also in regard to which the members of the court are supposed to be familiar. As to the manner in which the ship was lost, the decision of the Naval Court is not final, and it would be singular if it were so. It was no part of his duty to express an opinion as to which of the witnesses should be believed. That was the function of the jury, who were to draw their own conclusions from the facts pointed out to them. The principal witnesses in this case—Thomas, Roberts, Hall and Trisinski—no doubt stand in a very peculiar position, and one which, to a certain extent affect their credibility. Three of them have been before the Notary and Naval Court in New York and made statements entirely contrary to what they stated here. It had been alleged by Mr. Kerr that having given contrary testimony before, now no credit was to be attached to their evidence. He could not go so far as that. The jury had a perfect right to believe or disbelieve them as they pleased. With regard to the evidence of an accomplice a jury will not generally convict on such testimony, without corroborative testimony in some material point in the case. This man Thomas, however, stands in a different position from accomplices in general, in this that he had not been arrested but came voluntarily. If he had kept his mouth closed, the transaction he describes would never have been known. It would be for them to consider whether this did not lead their minds to the conclusion that his testimony was to be believed rather than otherwise. A good deal has been said about the conduct of the underwriters in bringing these people to testify. If these people have bribed the witnesses, as Mr. Kerr alleged, then his language was not too strong, but if you believe Mr. Cleveland's evidence that he did no more than pay their expenses to come here and tell the truth, he could not see any objection to that, or that any blame could be imputed to the underwriters, but thought it was rather a commendable proceeding. With these general observations he then proceeded to read the evidence of the principal witnesses. He first took up the evidence of Thomas, the reading of which occupied nearly two hours. In connexion with it he read the evidence of Johnston and McNeil with reference to the contents of the letter from Tower to Thomas, saying that he expected to receive some money soon and would send him some. With regard to Thomas' evidence he said it was attacked on various grounds—1st, because it was unworthy of credit, having given testimony of a different character before the Naval Court. Such evidence was of course to be received with a great deal of doubt and discretion, but as he had already said, it was quite open to them to believe it. His statement was also attacked on the ground that the air-streak, were he said he bored the holes, was above water. This was affirmed by some witnesses and denied by others. A good deal as to the position of the air-streak, would depend on whether the vessel had one or two clamps between the stringers. It was also said to be impossible for four holes to be bored in a vessel without her filling much sooner, and also it was said that those on board the vessel must have heard the water rushing in, especially the mate, who went down into the hold to try and discover where the leak was. He would read all the evidence on these points at a later stage of his charge. He then proceeded to read the evidence of Tracey C. Roberts, and then read Captain Rouse's testimony in respect to the improper manner in which the log-book had been kept. His



Honor said: You can see the log-book, gentlemen, yourselves, and you can see whether it is open to the objections which Rouse has pointed out or not. While I am on the log-book I might as well refer to this fact:—Trisinski says in his evidence that on the morning they got on the Florida beach the log-book was lying on the top of the trunk, and Spline and he tore a leaf out of it and buried it in the sand. I have examined the log-book myself. You will find that there are 8 days out of it, representing 8 days on the voyage from Cardiff to Cienfuegos, which would probably be the time that Spline and Trisinski were not in irons. You will consider whether this corroborates Trisinski or not. Whether the entries are made neatly or not in the log-book, you will consider, and whether it apparently represents the course of the ship and the state of the wind and weather. Having now finished the evidence of Roberts I might as well say this—it is certainly singular that he should keep back the log-book so long. But it is not astonishing to lawyers how witnesses will keep back the evidence, and how hard it is to get witnesses to state what they know about anything. If you believe his evidence, that the book produced is really the log-book, and that the trunk he saved was really the trunk, it might appear singular, but so far as we can judge there is nothing wrong in keeping it back, and there is nothing to show it was not the log-book. It is an important piece of evidence I think. There is no wonder that Roberts gave his evidence in an embarrassed manner. He was in a very peculiar position. It was a very humiliating position for a man to place himself in. He was, no doubt, ashamed, as his duty as officer of the ship was to tell the truth about everything that happened, and that he should go before the Naval Court and state things that were not true, stating some things to be entirely different from what he gave here, it is no wonder that he should be embarrassed and confused. But there is a *locus penitentia* for a man to repent of the wrong he has done. Our religion tells us to repent, and the sooner a man repents the better if he does a wrong. He appeared to give his evidence in a confused way, and I say there is no wonder he did, for a man being placed in such a peculiar and humiliating position as he was placed.

His Honor next read the statements of Hall and Trisinski; and in connexion with the latter he alluded to the discussion between the counsel as to whether there were one or two bottles of melado produced in the Police Court. The prosecution claimed there were two bottles; the defence alleged there was but one. He thought Trisinski cleared up this matter, for, looking at the samples, he said of one "this looks like melado" and of the other "this *is* melado." It was a pity, His Honor said, that some mark had not been put on these bottles, when in the Police Court, by which they could have been identified at the present trial. His Honor read the evidence of the Police Magistrate and Police Clerk bearing on this question; also Mr. Cleveland's and Mr. Alward's. He then read the evidence of Joseph C. Hughes, the New York notary, and said—"Gentlemen you have heard the statement made before Hughes by these men. Trisinski says the protest was not read over to him. Now you have also heard Mr. Hughes who says it was. You have heard Hall, who says it was read over to him quick like a newspaper, and that he did not understand a word of it. But it is for you gentlemen of the jury, to decide which is true. It is true they have sworn to things there in New York that were not sworn to here, but are on the other hand contradictory. I must say that it is a most unsatisfactory way of taking protests; it is impossible for these men (the whole crew) that they should be able to state the same thing as it is stated here. It is a joint statement of the whole of them. It is not a separate statement of one man who states what he himself knows, but it is a joint statement by all. The steward says himself that he could not know anything about the water in the ship. But, gentleman, that is for you to consider. Trisinski says again with reference to this protest that the German, Carl, always signed his name "Carl," and never signed it "Charlie," but that is for you to consider. The hand writing was in the Protest Book, but Trisinski says he never saw him write his name Charlie, but always wrote his name Carl. If those men signed that statement, and it was read over to them, and they consented to it, it would be considered their statement, and I don't know whether they have a right to say it was not their statement; but if they signed it and did not know what it was, it is of very little value. If people will state things in such documents and then come forward and make contradictory statements, you can see how little value can be placed in such



documents. People's property may be at stake by such a principle. Hughes says he asked them if they understood it, and they signed it. I don't condemn Mr. Hughes, but I condemn the whole transaction. I don't pretend to say that Mr. Hughes has not told the truth or that he has done anything wrong, but I think the principle is wrong. If men are allowed to come forward and state things that they don't know anything about, I think it is a dangerous principle. I should say it is a most unsatisfactory way of getting the facts of a case. I should think to get the true facts of a case you should have an exact statement of what each man says himself. They cannot all know the same thing. One man may know one thing and another man another. To say all the men would come in and state the one and the same thing is absurd; but that don't affect the prisoner. His honor read the evidence of Captains Smith, Randall Morris and Boddie, Messrs. McCarthy, Jenkins, S. J. King, Captains Simpson, Silas Smith; Samuel Tufts, Fred J. Doherty, Charles Nevins, John Calhoun and Captain Rouse; mostly with respect to the position of the air-streak and the construction of the hull, with respect to the timbers. He also read Captain Dick's testimony; that of Powers, the stevedore, and John Mahony, Geo. H. Oulton, Captain Sinclair, Gilbert Murdoch on hydrostatics, Daniel J. McLaughlin, jr. Captain Mitchell, Captain Vaughan, Robert McBride, Charles A. Palmer, Noah Dowdell, and Judge Palmer, Mr. C. E. L. Jarvis, Mr. Loughead's evidence, and the evidence of Melian, Beste, Purdy. Hughes, H. R. Ranney, John Stewart, and Samuel Schofield. The proceedings before the Naval Court were then read by the clerk who also read the information taken at the Police Court.

The first question you will have to consider in determining this case is whether this vessel was lost by the ordinary perils of the sea, or whether she was scuttled by the prisoner in this case. [His Honor then read John Stewart's evidence given as rebuttal testimony by the Crown; also the evidence of Mr. Cleveland calling the attention of the jury particularly to the arrangements made with the witnesses called on the part of the Crown.] In order to determine this question as to whether the vessel was lost by the ordinary perils of the sea or scuttled by the prisoner, you must consider whether the evidence of Thomas is reliable or not, and this will involve the question whether the holes were bored through above or below the water line of the vessel. If this is true, as stated by Thomas, there is no doubt the holes would be below the water line; but this is for you to consider and not for me. If he comes here to make up this story that it was below the water line, and it was not below, he would be caught in his own trap; but it is for you to examine his evidence and see whether it is corroborated by the others. If vessels of the same tonnage are always built under the same inspection—that of Lloyds—one would suppose that there would be no difficulty in ascertaining whether or not the air-streak in the vessel was above or below the load line. I will call your attention to witnesses who say it was below and those who say it was above the load line. I do not think you will have any trouble in determining this. The evidence of Stewart, Purdy and Nevins appears to give a very fair statement of it. If you come to the conclusion that it was above the load line, a good deal Thomas' testimony falls to the ground. [His Honor then read from the testimony of Stewart, Purdy, Nevins, Doherty, Power, Jenkins, McBride, Smith and Rouse. Their statements of the dimensions of a ship with reference to the air-streak. I think I have given you the statements of all the witnesses who have testified as to the air-streak, giving measurements or any data by which to determine its position and you will have to decide for yourselves whether the air-streak came out above or below the load line. If you come to the conclusion that it came out above the load line, it will, as I have already said almost destroy the testimony of Thomas. There is another point that will enable you to determine whether he gave a good account of the boring or not; that is the evidence of witnesses whose testimony is intended to show that the noise of the water coming into the vessel through the auger holes would have been heard. The evidence on this point has been read to you, and you will be as competent as anybody to draw conclusions therefrom. The evidence of some tends to show that the master of ships would be more competent to judge as to this, but they all admit that there is a difference between water coming into a stationary vessel or one that is in motion. These are all matters for your consideration. If you come to the conclusion the water coming in could be heard all over the ship, it will, no doubt appear singular to you that it was not heard by



some of the crew ; but you must recollect that it is testified that the noise about the ship, the creaking of the cordage, and the noise of the pumps might greatly impede the noise of the water from the holes. There is another point : One of these holes was running on Monday and the others on Tuesday. The question is, how long it would take for such a quantity of water coming in a vessel to fill her ? You have the evidence of Mr. Murdoch of how much water will be discharged into a stationary vessel, but he admitted that he did not know how much would come in a vessel when she was moving through the water, and that the conditions being changed, the results he gave would all be changed. You are practical men and you can judge for yourselves ; and it is for you to determine whether Thomas' evidence is true upon the point as to whether the water coming into the vessel would fill her. You must next look at it and see if Thomas' evidence is credible and supported by other evidence. I told you the other day that I thought this log-book was a most important piece of evidence, and I think so still. If you are satisfied that this log-book was in the mate's trunk, and as several witnesses have testified that it was on top of the trunk drying, while on the Florida beach, you must believe that the captain was aware that this log-book was in existence when he made his protest before Mr. Hughes, and gave evidence before the Naval Court. Then, if he did know of its existence, it is a singular thing that it should be kept out of sight all this time. Mr. Hughes testifies that if he had known of the existence of the log-book he would not have taken the protest at all. Now, the question is, do you believe the log-book produced here is really the log-book ? Roberts tells you that the captain saw the trunk and the log-book lying on top of it, and that when the captain was in New York he knew all about it. If so, what was it kept back for ? Why did he not bring it forward so that the true state of the weather could be given at the time and just before the vessel was lost ? Trisinski said he saw the captain looking at the trunk while the log-book was lying on top of it. If this is so, why should such a falsehood have been told before the Notary Public and Naval Court in New York ? They were all there together on the Florida beach ; it was not like being in a large town where they would necessarily be separated ; but, on the contrary, they were all camped on the shore. Now, do you think it at all probable that the trunk and log-book would be on the shore where all the other hands could see it some eight or ten of them, and the captain not see it ? This must strike you as a singular transaction. It was also said that this was the only trunk saved from the ship. Therefore it could not escape their notice. It is said it was taken by mule teams which were procured to take them all to Titusville. Now do you believe that the captain knew the log-book was in existence when he gave evidence before the Naval Court and made his protest in New York ? If you do, how does he account for not producing it ? Was there any object in his keeping the log-book back ? If produced, by looking at it the court or the notary could at once ascertain the state of the weather, and whether such weather would have endangered the ship. Would not the court or notary have seen that there was no such gales as described in the protest ? Did he keep it back from the fact that if it had been brought there it would have contradicted their statements with reference to the loss of the vessel ? Now this is, as I have already remarked, a *very* important piece of evidence. If he knew that why did he tell a falsehood before the notary and Naval Court, and say that the protest is extended from memory, the ship's log-book having been lost. This is for you to consider.

Hall says, and his testimony, I may remark, is not satisfactory to me in one respect ; the way he gave it, his saying that he did not care whether his parents were living or dead ; this did not commend itself to me as respectable ; but he says that Captain Tower told him to say on going before the Naval Court that the log book was lost, and Roberts says this also. If this is true, it would show that it was suppressed for a cause. If the log book had been produced it would have shown that the vessel was not lost in the way it was said she was lost. Therefore it is a very important matter in this case. It would have given a true and faithful account of the ship on her voyage, and probably would have led to a more thorough inquiry of how she came to her destruction. Another point for your consideration is, do you believe that this vessel was burnt or not or do you think that these people have combined together to tell this story ? If you believe she was burnt, why was that fact kept back ? As it is alleged that the burning of the



vessel was a proper act of the captain, and that it was proper for him to destroy her, as she would be an incumbrance in the way of other vessels on the high seas, why was that withheld? If so commendable a thing, why is this not mentioned in the protest or before the Naval Court? Upon this point they appear to be silent. It appears to be the rule of shipmasters that the captain abandoning a vessel has no right to burn her, but the next captain who happens to meet with the abandoned vessel may burn her. I cannot say this is the law but there is, I must say, good reason for such a custom. For if a captain could get rid of his vessel by burning her, it would shield him in his bad conduct, and there would be no way of ascertaining his fraud. But if the captain of the abandoned ship was prevented from firing her himself, and there was any fraud in connexion with her loss, and she was picked up by wreckers, his act would be found out. Therefore I can understand why that prevailing rule is among merchant ship owners and captains. If you believe she was burnt for the purpose of keeping other vessels from colliding with her, why was this not told? Why keep it back? You have the evidence of Trisinski, who certifies that he told the captain he would not go before the Naval Court on account of the burning being suppressed. It appears that this witness himself was not satisfied with it. It appears to me to be a very important fact, the fact of these two things, the existence of the log book and the burning of the vessel being kept back. If you believe the evidence, Tower must have known of the existence of the log book and the burning, and you must consider this in coming to your conclusion. [After reading Captain Tower's statements before the Naval Court that the log book was lost, His Honor proceeded.] In this respect the prisoner at the bar stands in a different position from what persons usually do. He has in part at least told his own story, and in the Naval Court he swore that the log book was lost. He also says in the protest, that it was extended from memory, the ship's log book having been lost. This is the statement of Captain Tower together with the other men. If Captain Tower knew that the log book was in existence instead of being lost, he knew it was saved and saw it on the beach, and knew that it was in New York, how can you reconcile these statements with the log book now, as it is in existence here? Its not being produced before the Naval Court and the Notary, does that satisfy you that this vessel was lost by the ordinary perils of the sea, or was she lost and scuttled in the way Thomas has described? Gentlemen, that is a very serious matter, and I leave it to your consideration. I will now pass to another portion of this case. Many of these things may be small matters, but they form very important chains in the facts which may or may not lead to the conviction of the prisoner. It is for you to consider whether the stories told by these men are the truth or not. Do you believe it to be a fact that Thomas, the second mate, sent his trunk to New York by the T. C. Jones. You have the evidence of three on that point. If he did so, why should he send his trunk to New York when his own vessel was going to the same port in few days? Do you believe that he took his trunk out of the Brothers' Pride that was going to sail in a day or two from Cardenas and send it to New York by another vessel? The same trunk came to New York and from there it came to Tower's house and is in jail now. How do you account for that? Do you believe it? Does that account for the statement that Tower told him the vessel would never reach the United States. That was when Thomas told him he was going to Philadelphia.

There is another singular statement in this case—the bulk and weight of this cargo, but it is for you to say whether you believe this statement or not. Then, with reference to the letters which Thomas received from the captain. After he came to St. John he went to Captain Tower's house, and Tower gave him sums of money at different times. Once \$5 and another \$20. Why did he do this? His wages were all paid in New York, and nothing owing him at that time. Again, we have the evidence of Thomas and his cousin (McNeill) from Nova Scotia, that he wrote these two letters to which Thomas referred. One of these letters was with reference to Thomas getting money from the prisoner, Tower, stating that Judge Palmer had not got his insurance yet, but when he did he (Tower) would send him some money. He did not owe him anything then; and why, then, did he send that communication? In its language there is nothing very peculiar about it, but you may draw inferences from it if you think it important. (His Honor read the letter) This is a matter that don't depend upon whether Thomas



told the truth or not; the paper speaks for itself. Now, does this lead you to believe there was anything between them? Upon this you must draw your own conclusion; it is not for me. Then again his evidence is confirmed, (or which you may think confirmatory to the evidence of Thomas) that is the evidence of Trisinski. I have reference to one occasion when he says, while at the wheel the captain was with Thomas down in the water closet, he heard a noise like the breaking of boards and Tower came on deck perspiring. Afterwards he heard a noise like the boring of an auger. But it is for you to say whether you believe Trisinski on this point or not. Hall's evidence goes to show, in confirmation of Trisinski's, that he saw Tower and Thomas in the water closet together. Now, why should the captain and the second mate be in the water closet together? It was shown that there was accommodation only for one person; but it is for you to consider whether that corroborates Thomas' evidence or not. That is, whether as he said, he went down in the hold of the vessel to bore these holes without being seen by the rest of the crew; but these are all matters for your consideration. I now direct your attention to the evidence of Powers, as to how this bulkhead was constructed about the water closet. (His Honor here referred to Powers' evidence). He (Powers) says the post on which the boards were nailed was on the lazarette side, and they could not very well be kicked off, and that there would be considerable difficulty in getting them off from that side. Whether the boards at the rear of the lazarette were fixed like those, I don't know; but you have that evidence before you, and must draw your own conclusions. You have the statements of Thomas, Hall, and Trisinski of what they saw, and of what one heard. In questions of this kind, when a person is charged with a criminal offence you must look and see if he had a motive to commit the crime. Persons don't generally commit crimes without motives. In considering this you must see whether the prisoner had any motives for committing the crime of which he is charged. If he had no motive you might come to the conclusion the charge is not true; if on the other hand he had a motive, you have a right to believe it. One of the motives, if it is true, is that Tower stated he knew the vessel was well insured and that Judge Palmer wrote to him to sink her, and that he was going to get a large sum of money paid to him, part in the West Indies and part here. Now, whether he had knowledge of that insurance can be judged by the truth or falsity of what he said to Thomas. On the other hand, we have the evidence of Judge Palmer that he made no such statement to the prisoner. Now, do you believe Tower knew the vessel was insured or not? If not, it don't appear that Tower would destroy the vessel and the property of his employers. The vessel was insured, as it appears, in England and the prisoner was in England and left there just after the vessel was insured. It may be he had the opportunity of knowing she was insured, and it may not. Do you believe that he stated he had that information, or not? Do you believe he was going to get money for destroying the vessel? It appears to me that there is strong evidence in that he got a large sum of money after leaving Cardenas, but that is for you to consider! But there is no evidence to show how these large sums of money came to be received by him and his wife just a few days before the vessel left. Do you think that evidence could have been obtained from Cuba about it? If so, why was it not obtained? Another thing which you should consider in this case is, after this vessel was lost, Tower put large repairs on his house in Carleton. He told the insurance agent that he had put \$3,000 expense on his house. Now, would he have so much money from his wages? He was a man getting \$65 a month, from which he would not have very much money after supporting a family. This is very important evidence; that this money coming into Tower's hands, and that he had large sums of money just before this vessel was lost; but it is for you to believe whether he got this money for destroying this vessel, and that these large sums he got were the sums he told Thomas he was to get, according to Thomas' evidence. (Mr. Ray's evidence on sums deposited by Tower, was read; also Allison Wishart's evidence as to Tower's money transactions with the Bank of N. B.) I ought to state to you now whether some account ought to have been given by Captain Tower of this money from Cuba. Of course, the wife of the accused, Mrs. Tower, could not be a witness, but ample time has elapsed to obtain evidence from Cuba. But it is for you to say whether a transaction of this kind throws suspicion on Tower, and if it don't confirm Thomas' statement that Tower told him he was to get a large sum of money, part



here and part in Cuba, for scuttling the vessel. You will remember \$2,000 was drawn before he left Cuba. (Mr. Kerr asked His Honor to read the affidavits made to postpone the case till proper evidence could be got from Cuba.) I don't know as I will refer to the affidavits as they are not in evidence in this case. There is another point in this case I think important; that is, in regard to the cargo of the vessel. Do you think this cargo was really melado, or as some of the witnesses said, only dirty water? If the evidence of the Cuban, Melian, is to be relied on, and all the melado like in the broken casks, it is very clear it was not melado; but that is for you to say; and also as to the evidence of Beste who said he traded in the melado, and the evidence of others who have carried melado, whether it was dirty water or not. Of the other casks we don't know, we only knew of the casks that were opened. I think this is a matter for you to consider whether it was melado or not. If it was melado, what was its weight? Beste's evidence goes to show melado weighs from 1850 to 1900 lbs. per cask; and that of the Cuban to the same effect. Now do you think that the vessel was capable of carrying a cargo of 863 casks? With a cargo of 517 tons of coal she drew 14 feet of water. Now, how much deeper would she be with 863 casks of melado; one witness says, looking at her register, that 863 casks of melado would make an additional weight over the 517 tons, of 200 tons, and that this would bear her down 20 inches more in the water. Now, if that vessel was no deeper with the cargo of melado than she was when she came out with the coals from Cardiff, do you think it was melado or not? If not melado will that lead you to any suspicions of the captain's complicity in connexion with her loss? If melado you can see why the captain would not be guilty of destroying the vessel and her valuable cargo; but if not melado it supplies a motive for casting away the vessel with that stuff in. Do you think that he knew whether it was melado or not? Thomas says when the cargo was coming on board he told him it was queer looking stuff, and the captain made no response. They all say that one cask was on deck all the time, and that they had an opportunity of looking at it. The captain said to Thomas that the cargo was never going to New York. Does that lead your mind to any suspicion of the conduct of Tower, or does it satisfy you that the evidence of Thomas giving the way the vessel was destroyed was true or not?

The Cuban says (and he was not allowed to go as far as he was disposed to in speaking of this) she was called by the name of the "water barque." He was going to give his reason and was stopped in that. He said they took no care in stowing the cargo; that some of the casks burst and ran about the deck, and that the steward washed his clothes in it. One of the witnesses, Trisinski, I think, took some of it and put it in his tea, and it destroyed the tea. Now, did the captain know if it was melado or not? If a cask of melado weighs as Mr. Beste and other witnesses say, do you think a vessel would draw no more water than she would with 517 tons of coal? If not, does that satisfy you that this was not really melado? If it was melado do you think that this vessel, with the quantity of water stated to have been in her, would not have gone right down? A number of witnesses on both sides say she could not have floated any considerable time. Now, as to the quantity of water in the hold of this vessel: The evidence goes to show that there was about 12 feet of water. Now, if 12 feet of water had been in her, and she only little over a 12 feet hold vessel, could they have knocked in the bow ports and not reached water? The bow ports were down below water when they went back in the boats after abandoning her. The water was not up to the main deck, nor up to the cabin floor. The statement made before the Naval Court and notary that she was fired, if this is true, is not reliable and goes to show that the condition of the vessel was misrepresented before the notary and before the Naval Court. That her position was not such as would justify the abandonment of the vessel, some of the witnesses say if some seven or eight feet of water was in the hold and they could control the water they would not have abandoned her. Others say they would. That is for you to consider and draw your own conclusions. We are not trying Tower, as to whether he was guilty of misjudgment, but trying him for a criminal act. You are not trying him as to how she ought to have been lost; but whether she was lost in the way Thomas' evidence goes to show. If the evidence of Thomas is satisfactory to you that Captain Tower told him to do what he says he did and she was lost, there is an end to the matter. If you should be satisfied by the evidence of these various captains that have been called, that the



vessel was abandoned before she ought to have been, that might go to show there was something wrong and that she was not abandoned of necessity. There is another point. There does not appear to have been the slightest effort made by anyone but Roberts to see what caused this leak, and with reference to him it was singular that the second officer of the ship should have been satisfied by merely going down in the hold and looking round to see if there was water. That is for you to consider. But on the other hand, one would suppose that the captain, finding that his vessel was leaking very rapidly and that the leak could not be overcome by the pumps, and no one being able, apparently, to account for it; that he himself would have made some effort to discover where it was. But there appears not to have been the slightest effort made to discover where the leak was, except by Roberts, the first mate, as I have already stated. Again, they made no effort to lighten the vessel by throwing off the cargo. There were no signals of distress. Some witnesses say that it does not make much matter about signals of distress; others say they would put them up. You have heard the statements made by the crew before the Naval Court, and the evidence of Thomas and the others here. Now, it is for you to say at which place they were telling the truth. Roberts said that some of the casks swashed like casks of water, and other evidence goes to show that genuine casks of melado will swash. [His Honor read Roberts' evidence about the loading of the cargo and where he said he did not know if the captain knew anything more about the cargo than he (Roberts) did.] A great deal has been said about the construction of the bill of lading and the effect of the clause "weight and contents unknown." The meaning I take to be of this is, when the captain receives on board his vessel a certain number of casks or cases and signs a bill of lading, if he delivers those casks to the consignee, he is not responsible for what they contain, nor whether they contain what they have been represented to contain or not. If Captain Tower had gone to New York and delivered these casks, it would make no difference to him whether they were melado or dirty water. He would have discharged his duty and performed his part of the contract. But if he knew that they contained dirty water, the fact of his signing the bill of lading, "weight and contents unknown" would not affect the matter in any way. But if he did not know anything about it, he would not be responsible. If he knew when he got them on board, then a responsibility might attach, if anything was done during that voyage to destroy the vessel. If he knew what the cargo was and it was dirty water, would that be evidence of a motive for scuttling the vessel? Now, with reference to this insurance: we have Tower's statement that he made to Thomas that the vessel was insured for three times her value; but we have the evidence of Judge Palmer, who says he told Tower nothing about the vessel. If you think Tower told Thomas what Thomas said he did, how did Tower get his information! Do you believe the vessel was over-insured or not? On this point you have a great deal of evidence. It has been given in evidence that the vessel was not worth over \$10,000 Judge Palmer said he would not have sold her for \$16,000 or \$18,000; but it is for you to believe whether she was over-insured or not. By the accounts and letters between Judge Palmer and his agents the vessel appears to have been insured for £2,700 or £2,900. [His Honor read letters from Belyea & Co., and the account current up to Jan. 30, 1879.] A good deal has been said about these accounts, and whether certain marks which appear on this account are genuine marks, or whether they were put on afterwards or not. Judge Palmer has said, in consequence of certain marks on the accounts he considers that the £400 was only on the voyage out to Cienfuegos. Mr. Thomson, on the other hand, has contended that it could not have been the case; that the insurance was on the ship's account and on a round voyage to Cuba and the United States. Judge Palmer said he could not give any information about that £400, whether it was insurance on the vessel or not. Now, the question is, was the vessel over-insured? And if so over-insured, did the prisoner know that? If he did not the over-insurance on the vessel would not affect this case. If he did know it there might be some motive to lead him to destroy the vessel. If he did not it would appear that he had no motive to destroy the owner's property without being compensated, and therefore he would have nothing to do with Judge Palmer here, only as I have said. If he knew this article on ship board was not melado, he might have a motive for destroying the vessel. Otherwise, I don't know what motive he would have, but from the evidence of these parties you can draw your own con-



clusions. With reference to these four witnesses Mr. Kerr says no credibility ought to be attached to them. He says Thomas kept back the question of the vessel being insured at the police court inquiry, which he detailed at the present trial. That is, when he made his statement on which a warrant was issued against Capt. Tower, that nothing appeared in that statement beyond the fact that Tower gave him directions to bore holes in the ship. [His Honor read the information at the police court.] With reference to that I should say the fact of a man not stating everything in a preliminary trial, but giving a fuller statement when the case comes to a final trial, would not affect his credibility. When a prisoner is brought up for a preliminary investigation before a J. P., it is only necessary to go into such facts as will warrant the committal of the prisoner; but when the witnesses are brought before the court to give evidence against the prisoner, when put upon his trial they generally go more fully into it than they had before, when making the information. Mr. Kerr said there was nothing told about the captain telling Thomas the vessel was insured three times her value; but I am not prepared to say that his omitting that statement at the preliminary investigation, which was a very important one, should lead you to disbelieve his testimony here. If you believe that tends to discredit him, you may do so. I have already said the credibility of witnesses is with you and you have to consider whether the witnesses for the prosecution have told the truth or not. Do you think it probable that these four men would come here with the intention of making up this false statement against the prisoner. Is that probable? It might be that those large sums they are receiving from the insurance companies might have warped them; but it does not appear from the evidence of those witnesses that there is any combination between them, because no two of them tell the same thing. Trisinski don't tell what Hall does, nor Hall what Trisinski does, nor Roberts what the rest did. If they came here to combine together, they might have come here and all told the same story. They might have given more damaging testimony than they have. They might have given conversations that the prisoner could not deny; but it does seem that they all do not tell the same story, and that would rather go to satisfy me that they are telling truth, but that is for you to say. I don't know that there is anything more that I can tell you. I think I have told you most all, therefore I will leave the case to you without any further observations. I must say this, though, before concluding my remarks: that when a prisoner cannot tell his own story (although Capt. Tower has had a chance to tell his own story) he is presumed innocent until he is proved guilty beyond a reasonable doubt. If it is only on mere suspicion that you think he is guilty, on that alone you ought to acquit; but if the evidence brings to your mind that he is guilty of the charge, then you should convict him. But if it rests on suspicion, merely, as I said, you would not be justified in convicting him. That is the protection the law throws around prisoners, that they are not considered guilty until their guilt is proved beyond a reasonable doubt. You must be satisfied that this vessel was wilfully destroyed and that he did it with a felonious intent. If you are satisfied that he did it wilfully and maliciously, you would be justified in finding him guilty. When I say "maliciously and wilfully," I mean not negligently, but that you must be satisfied beyond a reasonable doubt that he did it with a wilful and malicious intent. If you believe the testimony of Thomas, then there is no doubt about it; but if you believe that his testimony is not based on facts, you have no right to convict the prisoner. You must look at all the surrounding circumstances, and at all the witnesses have said, and whether Capt. Tower told these witnesses to go before the Naval Court and keep back the fact of the vessel being burnt and concealing the log-book and stating falsely it was lost. You must consider all this. If you take the evidence of Thomas as true, do you think the circumstances tend to corroborate Thomas? The fact of the log being kept back and afterwards being produced; also the burning—do they corroborate Thomas! The next question is on what counts in the indictment do you find him guilty. You are entitled to find on one count and acquit on another. (His Honor read the several counts to the jury.) I had considerable doubt early in the trial whether "intent" could be found if the prisoner had no knowledge of the insurance; but I now think, if the prisoner did maliciously cast away the vessel, you would be justified in finding he did it with intent to defraud the underwriters. You cannot get at a man's intent except by inference. Though he knew of no insurance, the fact of



destroying the vessel would be malicious ; but there is evidence both ways. Thomas says he did ; Judge Palmer says he could not have known. The other count charges him with maliciously and feloniously casting away the vessel, without any intent. If a man does it wilfully and maliciously, you would be satisfied that it followed he did it feloniously. The third count charges him with setting fire. With reference to that, do you think the vessel was set on fire by Captain Tower's order of which I think there is no doubt, not for the purpose of taking her away from the obstruction of navigation but for the purpose of covering up his fraud ? They are all like separate charges ; you can find him guilty on one and discharge him on the other ; or find him guilty on the whole or discharge him on the whole ; but if you find that this was not done by the orders of Captain Tower, or if there is any doubt you would not be justified in convicting him. But if the facts are such that you can find no other way than Thomas has stated, you must find against him.

Mr. Kerr then requested His Honor to charge the jury on several questions which he submitted.

#### MR. KERR'S QUESTIONS TO THE JURY.

Mr. Kerr then requested His Honor to charge the Jury as follows : 1st. That Mr. Cleveland having sworn that he knew of the proceedings before the Notary and in the Naval Court, and was aware of the evidence there given by Thomas, Roberts, Hall, and Trisinski, who then and there had no object to gain in swearing falsely, his hiring and paying the same witnesses as he had done, together with his numerous communications by self and counsel with them respecting their evidence to be given here, the inducement of such hiring and payment has had the necessary effect of combining them against the captain and producing the opposite evidence since given by them before this court, and thereby casting suspicion and discredit upon such evidence or entitling it to be so viewed, as well also by their opposite oaths in the first-named proceedings.

2nd. That the prosecutors have given no evidence to connect the drafts put in evidence by them, with the charge in this indictment.

3rd. That there being entire absence of proof of any fraudulent bargain of the prisoner, with any person, or guilty purpose with reference to the cargo on board, the prisoner was in no way answerable for the quality and contents of the material in the hogsheads. or had any right to inquire into their weight or contents, the contract with Washington & Co., specifically \$5½ per hhd., of 863 hhds., weight and contents unknown.

4th. That there is no testimony confirmatory of Thomas, the accomplice's evidence, either as to the command or knowledge of the prisoner, as to the boring of holes in the air-streak, or any proof to identify the prisoner with it.

5th It appearing by the evidence of the prosecution that the vessel was entirely lost before she was bored in the bow ports or set fire to, and being dangerous to navigation while she floated, no felony to sink or set fire to her.

6th. No confirmatory proof of Thomas' or Hall's evidence as to boring holes in the bow ports or setting fire to the vessel, by the command of the prisoner.

7th. That it being severally and distinctly proved by Philip Palmer, witness, and by McLaughlin, Charles A. Palmer, and Judge Palmer, the owners of the Brothers' Pride, that they have never communicated at any time to the prisoner any knowledge about the insurance, and it being positively sworn by the prisoner himself before the Naval Court that he had no knowledge whatever of any insurance on the vessel or cargo, except what he had learned from the *Maritime Register* after the vessel had been lost, and no proof to the contrary except the accomplice, and which could not apply to any insurance put on after the prisoner left Cardiff ; the prosecutors have failed to make out any proof of the intent charged in the indictment, and have therefore failed in the insurance part of the prosecution.

8th. And while the owners have made no charge against the prisoner for the destruction of the vessel, they are defending him against such charge, and have sworn that they believe him innocent of it.

9th. The prisoner is no way answerable for the Messrs. Palmers' insurance or the manner of insurance, or their suit against the Great Western Insurance or other company.

10th. The only witness to the charge being Thomas, of the prisoner having combined with him to scuttle or destroy the vessel, his evidence as accomplice, is unconfirmed to identify the prisoner with it, his testimony is perjured, corrupted,

and destroyed. The facts which he swears to were unseen, unheard, unknown and unsuspected by any one about the ship, and are shown to have been impossible to be done in the manner in which he has described them.

11th. If the jury have a reasonable doubt upon the whole evidence of *feloniously* scuttling the vessel, he is entitled to an acquittal.

The Chief Justice said he had already charged the jury on all these points except the second, and with reference to these bank drafts, His Honor said—They have been put in for the purpose of connecting the prisoner with this fraud. Now it is for you to say whether these drafts came into Tower's hands. If you are led or not to the conclusion that these drafts were received for the purpose of destroying this vessel you may do so. I have told you all, I think, about these drafts and their effect. The prosecution has proved that a draft for a large amount was drawn at Cardenas, at the very place this cargo was shipped, in favor of Mrs. Tower and the amount of that draft came into possession of the prisoner; and it was proved also that other drafts were drawn subsequently and paid and the prisoner got the benefit of them. I think the prosecution have gone as far as they should, when they traced them into the possession of Tower. I think it was the duty then, of the prisoner to show why these drafts got into his possession, and dispel any suspicion caused by them. I think when the Crown shows that large sums of money came into the hands of Captain Tower, he ought to give evidence of how and why they came in. As to the witnesses, that they came here under the instruction of the underwriters, I have told you that if you believe they were hired and paid for their time at a certain rate per month, and that has induced them to make a false story against Captain Tower, you ought to discredit them altogether; but you are not bound to disbelieve them, but to consider whether they told the truth or not. I have already remarked about the effect of the clause in the bill of lading "weight and contents unknown." I think I said that if Captain Tower did not know what this cargo was and delivered it in New York, he would have satisfied the terms of his contract; but if he did know what the contents were, I think it would be important evidence as to whether he had an inducement to destroy this vessel. With reference to Thomas I said it would be better if there was corroboration, but I also said that it was not necessary and that you could believe him if you thought proper. Then there are statements of other witnesses as to the conduct of Captain Tower when he got to New York, and what he said to the men to do when they got there, and before the notary, and about the log-book, which he must have known, according to the evidence, was in existence. Therefore he must have told a falsehood there. Why should he keep back this log-book if he knew it was in existence? When those boats got ashore the crews of both boats were there together on the beach, and there is evidence that the trunk was exposed and that the log-book was on the trunk drying. It was the only trunk saved and afterwards was carried over to Titusville by mules. There is the evidence of Roberts that the captain knew the trunk and log-book were in existence. If he did know of the existence of the log, his statement before the notary and the Naval Court are false. If so, what reason is there for it? As regards Judge Palmer, you are not trying his case now. He may have done right or done wrong. He might have put large insurance on the vessel or made misrepresentations to Mr. Jarvis about this case. That has nothing to do with this case. The only question is, Did Tower know of this over-insurance on the vessel? If so, that might be some reason to induce him to commit this act, and be a motive for it. But that would not exist if he did not know, if he knew, it might be a motive for casting away the vessel. I have said these several counts are all distinct. You might find that he cast away the ship without intent to defraud the owners; but if you believe it was done with intent you would be entitled to find him guilty on all these counts.

The Jury retired at 1 o'clock and 7 hours later returned to court, the prisoner in the dock, and took their seats, when through their foreman, Mr. James Coleman, they announced they had found the accused, Capt. Wm. H. Tower guilty on all the counts in the indictment excepting 3 and 4, and recommended the prisoner to mercy. A dead silence and not a little consternation prevailed when the verdict was announced, it being the general opinion that the jury would disagree. The court room was



crowded with strangers and the probable action of the jury freely discussed before their appearance at 8 o'clock. It was impossible to tell what outward effect on the prisoner was produced by the verdict, so dim was the light. After the verdict had been read over by the clerk, Chief Justice Allen said he would forward the recommendation to mercy to the proper quarter. Appended to the verdict was the following :—

The following jurors desire to say with reference to the third and fourth counts that in view of the fact that no mention being made of the burning of the *Brothers' Pride* in the first information they cannot accept the evidence of the witnesses as worthy of belief in this particular.

W. R. MACKENZIE,  
THOS. GILMOUR.

The following recommendations accompanied the verdict :—

*To His Honor the Chief Justice :*

The undersigned beg leave to submit the following :—A charge of a very serious nature has been preferred against one of our number, viz., that of denying upon oath that he had expressed an opinion.

Now, although according to the strict letter of the law, such may appear to be the case, we are of opinion (after having spent fifty days in his company) that his meaning was that he would give a verdict according to the evidence, which view has been fully sustained and the ends of justice have been fully satisfied.

We, therefore, respectfully ask your Honor to forego the investigation.

We also beg to say that no blame can be attached to the Sheriff or any of his officers, or any others whose names were mentioned in this connexion.

Respectfully submitted,

Jury Room, }  
May 18, 1880. }

JAMES B. COLEMAN,  
On behalf of the Jury.

The Chief Justice said this met with his approbation and he would act according to its suggestion.

Another recommendation read :—

*To His Honor the Chief Justice :*

As regards the first and seventh counts in the indictment the jurors are of the opinion that A. L. Palmer as owner of the barque *Brothers' Pride* had no knowledge of Captain Tower's design of casting away the said vessel, and further the said A. L. Palmer, from the letters put in evidence, we believe did not communicate or advise any facts relative to insurances on the *Brothers' Pride*, freight or cargo, neither do we believe that he was connected with the act of Captain Tower, nor have we any evidence to show that he was in any way a party to the act as expressed in the indictment.

Considering the previous high character of the prisoner, and the probable circumstances of his being in the power of designing persons in Cuba, we do recommend him to the clemency of the court.

The Chief Justice then directed that the prisoner be kept in the custody of the Sheriff during the night, and said he would be prepared to receive bail as applied for in a day or two. The Court then adjourned, and thus on the 18th March this most important trial was brought to a close. The trial commenced on the 9th of March last, and up to yesterday includes a stretch of 51 days. Of this time, 44 days were actually spent in hearing the case. The jury, up to an hour before the verdict was rendered, stood ten for conviction to two for acquittal. The bail required for the prisoner's liberty until the points reserved by his counsel for argument on appeal before the Judges of the Province, was placed at \$16,000—the prisoner in \$8,000, and two sureties of \$4,000 each.

The penalty for the crime is imprisonment in the Penitentiary for a period of from two years to life.

The confessed accomplice, Howard C. Thomas, confined in the County Jail since the commencement of the case (Feb'y, 1880) was, on the day after the completion of the trial, discharged from custody, a *nol. pros.* having been entered by the counsel for the crown. The cost of the trial to the county was considerable, the hotel expenses amounting to \$1220.60.

The prosecution spared no expense in working up the case. Hall, one of the witnesses, was brought from Yokahama; Roberts was found in Ireland; Thomas was discovered in Nova Scotia, and Trisinski was got in Hoboken, N. J. Then Melian, the stevedore, was brought from Cuba, and an interpreter was brought from New York; and these people were under pay. Besides this, there are the expenses of Capt. Brown, who made investigation in Cuba, and the expenses of Mr. Cleveland who so successfully worked up the case here.

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### Press Comments.

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The publisher subjoins for general interest a synopsis of the comments of the St. John Press the morning after the verdict was returned.

The length of the trial, the nature and character of the evidence, the able manner in which the case was conducted by the counsel for the different interests; the frequent and sharp collisions between the two principal counsel, the careful, patient and elaborate charge of the Chief Justice, and the grave results to the prisoner of conviction, have all conspired to invest the case with an extraordinary degree of interest. It was for a time, and perhaps to the last, believed by some that the jury would not agree, but a contrary opinion was strongly held by others, and was justified by the result. Those who followed the evidence in the case, though portions of it were not free from difficulties, and who listened to the charge of the Chief Justice, will not be surprised at the verdict. That the vessel was scuttled by order of the prisoner, few seemed to doubt, though owing to the conflict between the previous statements of Thomas and the evidence lately given by him, there were some who questioned if the scuttling took place in the way described. The verdict will be generally allowed to be in accord with the evidence. The surprising recommendation to mercy, is, we suppose, a mode of giving expression to those humane feelings which juries entertain. This is the only theory on which we can account for such a recommendation, for if a captain is believed to have feloniously scuttled his vessel, or caused it to be done, in order to defraud underwriters or others, he is surely a fit subject for very severe punishment. His conduct is criminal in the extreme.—*Daily Telegraph*.

The case is unexampled in duration in the criminal trials of the Province. Both Judge and Jury bore with extraordinary patience the wranglings of counsel as well as much dry argument \* \* \* Judge Palmer's very clear and satisfactory evidence in regard to the insurances was particularly interesting. As to the verdict, it was probably no surprise to the prisoner after the Chief Justice's charge, which was adverse to the defence. The absence of any satisfactory explanation in regard to the receipt of large sums of money by Captain Tower from parties who were connected with the shipment, these have proved the real stumbling blocks to the defence in the case. \* \* \* It really seemed for a time as if it was Judge Palmer whom the prosecution was endeavoring to try, and the Chief Justice had to remind the jury yesterday that they were not trying Judge Palmer, but Captain Tower.—*Daily Sun*.

The verdict in the scuttling case has been much commented on and discussed, and will probably continue to be a subject for discussion for some time to come. Its real scope was not understood at first. It is an undeniable fact that days and days of the long trial were occupied in attempts at implicating the chief owner. So slight was the apparent relevancy of the evidence adduced in these attempts to the case presented against Tower that its admission was a matter of surprise; and the conclusion of many on-lookers was that one of the main aims of the prosecution was the implication of the principal owner. The jury were compelled by the evidence submitted to them to consider the charges specific and implied against the owner. They found them untrue. Accepting the main evidence against Tower as credible, they felt forced to conclude him guilty of the chief charges against him. But they saw and could not help seeing that if their verdict against him should be coupled with no indication of their finding on the charges which the prosecution tried so hard to establish against Judge Palmer, the public would probably regard the verdict against Tower as a *quasi* verdict against the Judge. \* \* \* The one part of their verdict is entitled to as much respect as the other. Each contains a conclusion arrived at under oath on the evidence submitted to them under the rulings of the presiding Judge. If their finding in regard to the chief owner was irrelevant, so was the evidence admitted against and for him.—*Daily News*.





